

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

January 31, 2008

Report No. 256

Former Head Men's Basketball Coach

Ohio State University

Columbus, Ohio

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

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I. INTRODUCTION.

The NCAA Division I Committee on Infractions December 9, 2005, and February 3 and 4, 2006, heard a major infractions case involving violations committed by Ohio State University and its former head men's basketball coach. March 10, 2006, the Committee on Infractions issued Infractions Report No. 256 which included findings of violation and imposed a show cause order against the former head men's basketball coach. The former head men's basketball coach appealed the findings of violation and penalty. The NCAA Division I Infractions Appeals Committee heard his appeal October 20, 2006. The Infractions Appeals Committee's decision was issued April 13, 2007, and the penalty was remanded to the Committee on Infractions. The Committee on Infractions issued a Supplemental Report of Infractions Report No. 256 May 9, 2007. The former head men's basketball coach appealed the revised penalty. In this report, the Infractions Appeals Committee addresses the issues raised on appeal by the former head men's basketball coach.

II. BACKGROUND.

The Committee on Infractions issued Supplemental Report of Infractions Report No. 256 May 9, 2007, in which the committee imposed a two-year show cause order (May 9, 2007, to May 8, 2009) on the former head men's basketball coach. [May 21, 2007, issue of The NCAA News.]

After the Committee on Infractions issued its report, former head men's basketball coach filed a timely notice of appeal May 9, 2007. A written appeal was filed July 20, 2007. The Committee on Infractions filed its response August 23, 2007. The former head men's basketball coach filed his rebuttal to the Committee on Infractions response September 7, 2007. The case was considered by the Infractions Appeals Committee December 14, 2007 (see Section V below).

III. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS.

The revised penalty is set forth in Section V of the Supplemental Report:

“The former men's basketball coach will be informed in writing by the NCAA that, due to his involvement in these violations of NCAA legislation, if he seeks employment or affiliation in an athletically related position at an NCAA member institution during a two-year period (May 9, 2007, to May 8, 2009), he and any involved institution shall be requested to appear before the Division I Committee on Infractions to consider whether the member institution(s) should be subject to the show cause procedures of Bylaw 19.5.2.2-(l), which could limit his athletically related duties at any such institution for a designated period. [Note: this constitutes a reduction in the penalty from a five-year to a two-year show cause penalty.]”

IV. ISSUES RAISED ON APPEAL.

In the former head men's basketball coach's written appeal, he asserted that the revised penalty should be set aside on the grounds that it is excessive, inappropriate and arbitrary given past precedent.

V. APPELLATE PROCEDURE.

In considering the former head men's basketball coach's appeal, the Infractions Appeals Committee reviewed the notice of appeal; the transcripts of the institution's December 9, 2005, and February 3 and 4, 2006, hearings before the Committee on Infractions; and the submissions by the former head men's basketball coach and the Committee on Infractions referred to in Section II of this report.

A hearing on the appeal was held by the Infractions Appeals Committee December 14, 2007, in Dallas, Texas. The former head men's basketball 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 NCAA Committee on Infractions. Also present were the vice president of enforcement services, director of enforcement services and assistant general counsel of the NCAA. The hearing was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

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

The former head men's basketball coach raised the following points on appeal:

1. There was little basis on which to penalize the former head men's basketball coach and none of the conduct that remained at issue was the sort that would justify a show cause penalty;
2. The penalty far exceeded even the most serious presumptive penalty set forth in NCAA Bylaw 19.5.2.1 and the Committee on Infractions did not articulate a basis for doing so as required;

3. The penalty imposed was arbitrary and excessive when compared to the penalties imposed in similar Committee on Infractions cases; and
4. The former head men's basketball coach was not given appropriate credit for his self-imposed penalties.

The argument made in the second point is unavailing because the penalties set forth in Bylaw 19.5.2.1 are applicable to institutions, not individuals. Thus, the Committee on Infractions was not required to comply with the bylaw requirement that any exceptions to the presumptive penalties be based on "specifically stated reasons."

Point Nos. 1, 3 and 4, separately and together, essentially assert that the penalty imposed by the Committee on Infractions was excessive and/or inappropriate. Given the standards that the Infractions Appeals Committee has articulated and applied in previous cases, the committee finds no basis on which to conclude that the penalty imposed here was either excessive or inappropriate. Thus, we affirm the Committee on Infractions' revised penalty: a two-year show cause order.

However, in revising the penalty on remand, the Committee on Infractions determined that the show cause order would run from the date of its supplemental report (May 9, 2007), rather than from the date of its original decision (March 10, 2006). The Infractions Appeals Committee finds this to be inappropriate. When this committee has reduced show cause orders in the past, we have not changed the start date of the show cause order. Rather, the end date of the show cause order was changed to reflect the reduction that resulted from this committee's decision. Consistent with this practice, and in fairness to appealing parties, we hold that when this committee remands a case to the Committee on Infractions for reconsideration of a penalty (which this committee did for the first time in this case), the penalty imposed by the Committee on Infractions on remand replaces the original penalty. Accordingly, the revised penalty must run from the same date as the original penalty imposed by the Committee on Infractions. Thus, the two-year show cause order in this case began March 10, 2006, and shall run until March 9, 2008.

Finally, the former head men's basketball coach argued that the Committee on Infractions improperly denied him an opportunity to be heard, by an in-person hearing or a written submission, regarding the revised penalty to be imposed on this committee's remand to the Committee on Infractions. The bylaws do not address this issue. The Committee on Infractions stated that it did not hold a hearing because it wished to decide the matter expeditiously. While this is an important consideration, we believe it must be balanced against the individual's interest in being heard, an interest that ordinarily is as important

on remand as it is at the original hearing. It may not always be necessary to hold an in-person hearing, a written submission may be adequate in some cases. In either event, the better practice in these circumstances is to provide appealing parties some opportunity to be heard. We leave the particulars to the discretion of the Committee on Infractions.

VII. CONCLUSION.

The two-year show cause order (Penalty V) is affirmed. The period of this show cause order is revised to run from March 10, 2006, to March 9, 2008.

NCAA Infractions Appeals Committee

Christopher L. Griffin, chair
William P. Hoye
Terry Don Phillips
Noel M. Ragsdale
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