

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

November 1, 2018

Decision No. 487

Former Assistant Athletics Director

University of Mississippi

Oxford, Mississippi

This decision is filed in accordance with NCAA Article 19 and is organized as follows:

I.	INTRODUCTION.	1
II.	BACKGROUND.	1
III.	FINDING OF FACT 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.	1
VI.	ISSUES RAISED ON APPEAL.....	2
VII.	APPELLATE PROCEDURE.	2
VIII.	INFRACTIONS APPEALS COMMITTEE’S RESOLUTION OF THE ISSUES RAISED ON APPEAL.....	2
IX.	CONCLUSION.....	6

I. INTRODUCTION.

The former assistant athletics director at the University of Mississippi (hereinafter referred to as Ole Miss) 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 decision, the Infractions Appeals Committee addresses the issues raised by the former assistant athletics director (hereinafter referred to as former assistant athletics director).

II. BACKGROUND.

The Committee on Infractions issued Infractions Decision No. 487 December 1, 2017, in which the committee found violations of NCAA legislation in the football program. Based on 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.

After the Committee on Infractions issued its decision, former assistant athletics director filed a timely Notice of Appeal December 15, 2017. A Written Appeal was filed February 22, 2018. The Committee on Infractions filed its Response April 11, 2018. Former assistant athletics director filed his Rebuttal to the Committee on Infractions Response April 24, 2018. The case was considered on the written record by the Infractions Appeals Committee July 18 - 19, 2018 (see Section VII below).

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

See Committee on Infractions decision for Ole Miss Page Nos. 4 through 22. 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 Ole Miss Page Nos. 22 through 52. A copy of the decision may 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 show-cause order because of the involvement of former assistant athletics director in violations. The show-cause order imposed on former assistant athletics director is set forth in Section VII.10 of the Committee on Infractions infraction decision:

The assistant athletic director referred two prospects to the retail establishment, where they received free merchandise. He arranged impermissible lodging, meals

and transportation for visiting prospects and maintained a second phone that he used for recruiting activities in violation of institutional policy. When student-athlete 1 expressed a desire to be paid for his commitment to attend Mississippi, the assistant athletic director referred him to boosters 9 and 10, who provided student-athlete 1 with thousands of dollars. During the investigation, he provided false information to the enforcement staff. Therefore, the assistant athletic director will be informed in writing that the panel prescribes a five-year show-cause order pursuant to Bylaw 19.9.5.4. The show-cause period shall run from December 1, 2017, through November 30, 2022. Any NCAA member institution employing the assistant athletic director during the five-year period shall prohibit him from all recruiting duties, both on- and off-campus. The five-year show-cause order is consistent with those prescribed in other cases. *See Southern Methodist* (prescribing a five-year show-cause order for the Level I-Aggravated violations of a men's golf coach who provided impermissible recruiting inducements to multiple prospects and gave false or misleading information during the investigation).

VI. ISSUES RAISED ON APPEAL.

In former assistant athletics director's written appeal, he asserted that the findings of violations IV-G, IV-I, IV-K and IV-L against him should be set aside because they were clearly contrary to the evidence. He also argued finding of violation IV-L should be set aside because of procedural error. Finally, he argued the Committee on Infractions abused its discretion in prescribing penalty VII-10, the five-year show-cause order.

VII. APPELLATE PROCEDURE.

In considering the appeal, the Infractions Appeals Committee reviewed the Notice of Appeal; the record and transcripts of the Ole Miss September 11 - 12, 2017, hearing before the Committee on Infractions; and the submissions by the former assistant athletics director and the Committee on Infractions referred to in Section II of this decision.

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

Pursuant to Bylaw 19.10.1.2, a Committee on Infractions' factual findings and its conclusion that one or more violations occurred shall not be set aside on appeal except on a showing by the appealing party that:

- (a) A factual finding is clearly contrary to the information presented to the Committee on Infractions;

- (b) The facts found by the Committee on Infractions do not constitute a violation of the NCAA constitution and bylaws; or
- (c) There was a procedural error and but for the error, the Committee on Infractions would not have made the finding or conclusion.

Further, a penalty imposed by the Committee on Infractions may be set aside on appeal if the imposition of the penalty is an abuse of 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, Public Infractions Appeals Committee Report (June 30, 2009) Page No. 23]

At issue in this appeal are three findings of violations by the Committee on Infractions that the former assistant athletics director arranged improper recruiting inducements for prospective student-athletes. More specifically, the Committee on Infractions found he arranged for prospective student-athletes to receive free merchandise and free lodging during visits to his institution and was involved in improper cash payments to the prospective student-athletes and their families.

The former assistant athletics director also appealed the Committee on Infractions’ finding of a violation that he engaged in unethical conduct because of the recruiting violations and for providing false and misleading statements during the investigation. Finally, he appealed the five-year show-cause penalty imposed by the Committee on Infractions. [Committee on Infractions Decision Page Nos. 39 through 42]

The former assistant athletics director argued the findings of violations related to impermissible recruiting inducements were clearly contrary to the evidence, given they were based on the statements of a biased and untrustworthy student-athlete witness. [Written Appeal Page No. 8] More specifically, former assistant athletics director argued the Committee on Infractions erroneously credited statements from the student-athlete witness despite contrary statements by several other parties. He also argued the Committee on Infractions failed to consider material and objective evidence which fundamentally refuted the statements of this witness. [Written Appeal Page No. 14]

The former assistant athletics director also argued that but for a procedural error, the recruiting and unethical conduct violations could not have been found by the Committee on Infractions. More specifically, he argued the Committee on Infractions failed to disclose a prejudicial piece of information prior to its hearing, and this negatively impacted the credibility determinations on which the Committee on Infractions rested its findings. [Written Appeal Page Nos. 16 through 19]

The former assistant athletics director also appealed the five-year show-cause penalty as an abuse of the Committee on Infractions' discretion. In support of this position he argued the email shared at the infractions hearing which alleged he committed illegal acts outside the confines of this investigation completely undermined his credibility. [Rebuttal Page No. 4] Even though the Committee on Infractions ultimately determined the email not to be germane to the case, former assistant athletics director argued the introduction of this information was highly prejudicial and constituted procedural error. He contended that but for this error, the committee would not have reached the conclusion it did, because the underlying violations were almost exclusively based on the Committee on Infractions' determination the student-athlete witness was more credible than the former assistant athletics director. [Rebuttal Page Nos. 4 through 6]

The Committee on Infractions argued the underlying recruiting violations are not clearly contrary to the information in the record because they are supported by credible statements of multiple individuals, phone records, video and text messages. [Committee on Infractions Response Page No. 9] It also argued the former assistant athletics director's attempt to refute the student-athlete witness only with respect to the free merchandise finding was problematic, and that a general objection to any finding which relies on the student-athlete witness' statements is insufficient to satisfy the legislated standard on appeal. [Committee on Infractions Response Page Nos. 12 through 18] The Committee on Infractions also argued the finding of recruiting violations did not rest on a procedural error because the parties were given access to all pertinent information. Therefore, the Committee on Infractions argued the findings of violations should be upheld. [Committee on Infractions Response Page No. 19] Because former assistant athletics director's violations were severe and intentional in nature, the Committee on Infractions argued the five-year show-cause order was not an abuse of its discretion.

In its review of this appeal, the committee found no basis to determine the violations found by the Committee on Infractions were clearly contrary to the information. As we stated in the University of Mississippi (1995) 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 upon which the

committee based a finding. The Infractions Appeals Committee under existing legislation will set aside a finding only upon a showing that information that might have supported a contrary result clearly outweighed the information upon which the Committee on Infractions based the finding.

[Infractions Appeals Committee Decision, University of Mississippi (May 1, 1995)
Page No. 8]

Although former assistant athletics director set forth information that might support a contrary result, this information was limited to the finding he arranged for prospective student-athletes to receive free merchandise. He did not provide any specific information to refute the findings related to the provision of free lodging or cash payments for prospective student-athletes, or his unethical conduct. The former assistant athletics director's general objections to the Committee on Infractions' reliance on statements from the student-athlete witness, whom the Committee on Infractions determined to be credible, do not clearly outweigh the information on which the Committee on Infractions based its findings related to the remaining impermissible recruiting inducements. They also do not support a contrary result with respect to the unethical conduct violation.

In reviewing former assistant athletics director's argument that his five-year show-cause penalty was based on procedural error and an abuse of the Committee on Infractions' discretion, the committee was concerned by the introduction of what former assistant athletics director described as potentially inflammatory and discrediting information at the hearing, especially given some members of the Committee on Infractions may have known about the same prior to the hearing. [Committee on Infractions Hearing Transcript September 12, 2017, Page Nos. 109 through 118]. When analyzing an allegation of procedural error, this committee has indicated the issue on appeal is whether the alleged procedural error "affected the reliability of the information that was used to support the committee's finding." [Infractions Appeals Committee Public Report, Former Head Men's Soccer Coach, West Virginia University (April 4, 2008) Page Nos. 10 to 11] Despite its concern, the committee determined the former assistant athletics director did not demonstrate how the alleged procedural error impacted the reliability of the balance of the information used by the Committee on Infractions. Further, he did not demonstrate a different result would have occurred but for the introduction of the email referenced above. Therefore, the committee found the five-year show-cause penalty is not an abuse of discretion and should be upheld.

IX. CONCLUSION.

The Infractions Appeals Committee upheld the factual findings, conclusions and appealed penalties.¹

NCAA Infractions Appeals Committee

Patti Ohlendorf, chair
Ellen M. Ferris
W. Anthony Jenkins
Allison Rich.

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 former assistant athletics director and ends with the public release of the committee's decision. Therefore, the former assistant athletics director's affirmed penalty VII, five-year show-cause order shall be applied November 1, 2018 through October 31, 2023.