

NCAA DIVISION I COMMITTEE ON INFRACTIONS: THREE-YEAR INTERNAL REVIEW

Prepared for the NCAA Division I Board of Directors
On behalf of the NCAA Division I Committee on Infractions
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Office of the Committees on Infractions

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The NCAA Division I Committee on Infractions provides this report to the NCAA Division I Board of Directors as part of the Enforcement Working Group Reform package approved on October 30, 2012. The report details the Committee on Infractions' and the Office of the Committees on Infractions' internal review of (1) operation and procedure changes made since the effective date of the reforms in August 2013; (2) key performance indicators; (3) ongoing challenges to the infractions process; and (4) strategic initiatives designed to meet challenges and to provide the NCAA membership with a quality, fair, timely and understood infractions process.

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EXECUTIVE SUMMARY

The NCAA Division I Committee on Infractions (COI) is an independent membership body charged with deciding infractions cases involving alleged NCAA rules violations for member institutions and their staff. See Attachment A. Since the NCAA Division I Board passed the Enforcement Working Group (EWG) reforms in October 2012 and its implementation in August 2013, this report details the COI's actions in six areas:

- increasing the size and diversity of the COI;
- sitting in panels to decide cases;
- implementing a training program for the COI;
- developing transparent operating procedures;
- applying the new violation structure and penalty guidelines; and
- identifying and meeting challenges to the model. [See Attachment B.]

The first change to the COI has been to increase the COI from 10 to 24 members. The COI has incrementally expanded to 19 members (including presidents, chancellors, athletics directors and coaches) and will increase to 24 members in the future. The last three years, panels of five to seven COI members have heard cases. Historically, the COI heard cases as a single body.

Since expanding and using the panel structure, the COI has conducted new-member onboarding and full COI training sessions twice a year. These trainings ensure a consistent and quality process. The COI and the Infractions Appeals Committee (IAC) have met to discuss issues of joint concern.

Previously, operating procedures appeared in the bylaws. Following the reforms, the expectation is that the COI promulgates transparent internal operating procedures (IOPs) that address COI operations and nuances of the infractions process. Since August 2013, the COI has promulgated 140 IOPs, which are available to the parties.

COI panels have applied the new violation structure and penalty guidelines since August 2013. The COI has decided 33 cases under the different case tracks established under the bylaws. To date in 2016, the COI's docket has increased. Projections for 2016 show a 50 percent increase from 2014 and 30 percent increase from 2015. Projections do not include potential appeals.

The COI controls one segment of the infractions process (i.e., the COI does not control the investigation, allegations or the appeal). Since moving to the panel structure, the COI has cut the time from hearing to issuance of the decision by 15 percent – with a greater decrease over the last six months. The COI continues looking for ways to efficiently release decisions, while maintaining quality decision making. A number of factors affect the COI's ability to release a decision (e.g., number of cases, case size, need for follow-up information).

The COI also continues looking for other ways to improve the process. The COI has worked with the enforcement staff on monitoring cases moving through the process. The COI also commissioned a 60-year infractions study to obtain violation and penalty baseline data under the previous structure. Further, the COI is rolling out a system that will generate key performance metrics. The COI has also held membership education sessions and engaged the IAC to discuss caseloads and appeal standards.

CHANGES TO PROCESS AND PROCEDURE

Included for context the COI provides a brief summary of the fundamental changes to the infractions process, which arose from the EWG reforms. This section breaks those changes into four primary areas: I. COI composition and structure; II. Violation structure; III. How cases are heard; and IV. Penalty structure.

I. COI composition and structure

The reforms changed the size and composition of the COI. The COI used to be 10 members that heard every case. The bylaws now establish a COI of not more than 24 members. The bylaws also require, where reasonably possible, that the COI have members from seven categories (e.g., former college presidents, chancellors or senior administrators no more than three years removed from employment at a member institution at the time of appointment; current or former athletics directors no more than three years removed; former NCAA coaches no more than 10-years removed; conference officials; university staff or faculty, not limited to faculty athletics representatives; athletics administrators with compliance experience; and members of the general public with legal training). The goal was for the COI to expand from 10 to 24 members within a reasonable time. Panels of five to seven members from the COI hear and decide cases.

II. Violation structure

The reforms changed the violation structure for infractions cases. Previously, violations were either major or secondary. NCAA bylaws now establish a four-tier violation structure: *severe breaches of conduct* (Level I), *significant breaches of conduct* (Level II), *breaches of conduct* (Level III) and *incidental infraction* (Level IV). The COI only hears Level I and Level II cases but can hear some Level III violations when part of a more severe case. Violation level impacts the mode of how the case is processed and affects the severity of the penalties.

III. How cases are heard

The COI hears cases through different tracks. The goal of having different tracks was to provide parties with more options for the COI to hear cases and to limit the expenditure of resources. Generally, those modes are an accelerated hearing on limited issues, a contested hearing, a summary disposition review based on the parties' agreement and a hearing only on the penalties. These tracks have different timeframes for reaching a decision (e.g., a contested case includes 180 days of bylaw-mandated response periods, whereas other tracks move more quickly). The nature and number of the violations in a case can dictate which tracks are available. The reforms also encouraged the use of video-conferencing where appropriate. Finally, the COI can hear appeals from Level III penalties prescribed by the enforcement staff that arise from Level III suspensions or show-cause orders.

IV. Penalty Structure

Under the new structure, a panel uses penalty guidelines for core penalties: competition penalties, financial penalties, scholarship reductions, head coach restrictions, recruiting restrictions, probation and show-cause orders when the institution's actions are insufficient. Each party in an infractions case may have aggravating and mitigating factors related to their conduct and violations. A panel considers the weight and number of aggravating and mitigating factors and assigns a party one of three classifications: *aggravated*, *standard* or *mitigated*. The level and classification controls which cell the panel uses to calculate the penalty. The cell impacts the duration and severity of penalty ranges for core penalty areas, unless there is a reason to deviate. As was the case historically, the COI has a range of other penalties (e.g., vacation of wins).

CHANGES TO PROCESS AND PROCEDURE

This section breaks down the COI's operation and procedure changes since August 2013 into three general areas: I. Committee expansion; II. Internal operating procedures; and III. COI training. The COI believes that it has complied with the EWG expectations over the three-years since implementation of the reforms.

I. Committee expansion

The EWG reforms had three principal goals for expanding the COI. First, panels of five to seven members would hear cases on a monthly basis. Second, there was a desire to ease the workload on individual members. Third, diversity of experiences and backgrounds of the COI members was important. The EWG reforms established a goal of expanding the COI to 24 members within a reasonable period of time. There are currently 19 members.



Michael Adams, *President emerita of the University of Georgia and Chancellor of Pepperdine University*. Served as president of University of Georgia from 1997 until 2013. Served as vice president for university affairs at Pepperdine University, was president at Centre College and taught at Ohio State. Earned degrees from David Lipscomb College and Ohio State University. Term 2 expires August 2017.



Britton Banowsky, *Executive Director of the College Football Playoff Foundation*. Previously, commissioner of Conference USA, associate commissioner and general counsel for Big 12 and Southland Conference commissioner. Earned business degree and law degree from Oklahoma. Term 3 (final) expires August 2017.



John S. Black, *Attorney and General Counsel for the National Federation of State High School Associations*. He has extensive experience in the areas of sports law, business law and alternative dispute resolution. Earned undergraduate degree from Colorado College and law degree from Duke University. Term 3 (final) expires August 2017.



Carol Cartwright, *President emerita of Bowling Green and Kent State Universities*. Served as president of Kent State University from 1991-2006 and president of Bowling Green State University from 2009-11. Served as the vice chancellor for Academic Affairs at the University of California at Davis and dean for undergraduate programs and vice provost at The Pennsylvania State University. Earned degrees at Pittsburgh and Wisconsin-Whitewater. Term 1 expires August 2016.



Greg Christopher, *Director of Athletics at Xavier University* since 2013. Served as director of athletics at Bowling Green State University and associate athletic director for external relations at Purdue University. Former communications marketing analyst and former executive director of Society of Professional Journalists. Earned degrees from Miami University (Ohio). Term 1 expires August 2015.

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Melissa L. Conboy, *Senior deputy athletic director at the University of Notre Dame*. Oversees the legal affairs of the athletic department and has responsibility for the master plan for facilities, human resources, legal contracts and is the liaison to the Athletic Affairs Committee of the Board of Trustees. She is also the sport administrator for the volleyball program. Earned undergraduate degree from Notre Dame and law degree from Kansas Law School. Basketball student-athlete at Notre Dame. Term 3 (final) expires in August 2017.



Bobby Cremins, *Former head men's basketball coach at College of Charleston, Appalachian State and Georgia Tech*. Retired in 2012. Earned degrees from South Carolina. Basketball student-athlete at South Carolina. Term 1 expires August 2016.



Jack Ford, *CBS News Legal Analyst and Correspondent for 60 Minutes Sports*. Earned undergraduate degree from Yale University and law degree from Fordham University School of Law. Term 1 expires August 2017.



Alberto Gonzales, *Dean and Doyle Rogers Distinguished Professor of Law at Belmont University*. He was nominated by President George W. Bush and confirmed by the United States Senate as the 80th Attorney General of the United States on February 3, 2005 and served in that capacity until September 2007. Earned undergraduate degree from Rice University and law degree from Harvard Law School. Term 1 expires August 2017.



Thomas Hill, *Senior policy advisor and special assistant to the president at Iowa State University*. Served as dean for student services at the University of Florida, assistant athletic director for student life at Tulane University and the University of Oklahoma. Earned degrees from C.W. Post-Long Island and Arkansas State University and Ph.D. from the University of Florida. Track student-athlete at Arkansas State. Term 1 expires August 2015.



Joel Maturi, *Adjunct professor of kinesiology at University of Minnesota, Twin Cities*. Served as assistant/associate athletics director at the University of Wisconsin – Madison, director of athletics at the University of Denver, director of athletics at Miami (Ohio) University and director of athletics at the University of Minnesota. Earned degree from Notre Dame, completed his credits for a Master of Arts in Teaching from the University of Wisconsin – Madison and earned a Master of Educational Professional Development from the University of Wisconsin – Platteville. Term 1 expires August 2016.

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Gary Miller, *Chancellor at the University of Wisconsin-Green Bay*. Served as the chancellor of the University of North Carolina Wilmington. He was previously Provost and Vice President for Academic Affairs and Research at Wichita State University and Dean of the College of Pacific (arts and sciences) at the University of the Pacific. Earned master's and bachelor's degrees in Biology from the College of William and Mary and a Ph.D. in Biological Sciences from Mississippi State University. Term 1 expires August 2018.



Eleanor W. Myers, *Law professor and faculty athletics representative emerita at Temple University School of Law*. Vice Chair of the Committee on Infractions. Prior to joining the Temple faculty, she was an associate at the University of Pennsylvania's Center on Professionalism, where she developed, published and taught professional responsibility education modules to practicing lawyers throughout the U.S. Earned undergraduate and law degree at the University of Pennsylvania. Term 2 expires August 2015.



Joe Novak, *Former head football coach at Northern Illinois University*. He was an assistant coach at Miami University (OH), the University of Illinois, Northern Illinois, and Indiana University. He earned a bachelor's and master's degree from the University of Miami. Term expires August 2017.



Larry Parkinson, *Director, Division of Investigations, Office of Enforcement for the Federal Energy Regulatory Commission*. Responsible for all investigations for the FERC. Prior to joining FERC, served as Deputy Assistant Secretary for Law Enforcement, Security and Emergency Management at the U.S. Department of the Interior. Earned undergraduate degree from Northern State College and law degree from Harvard Law School. Term 1 expires August 2017.



Jill Pilgrim, *Attorney and Founder of Pilgrim & Associates*. Former general counsel and director of business affairs for USA Track and Field and former general counsel of the Ladies Professional Golf Association. Track student-athlete at Princeton. Earned undergraduate degree from Princeton University and law degree from Columbia University School of Law. Term 1 expires August 2017.



David Roberts, *Vice President of Athletic Compliance at the University of Southern California*. Prior to joining USC, Roberts was a partner with Paul, Hastings, Janofsky & Walker in Los Angeles, and later the founding and managing partner of Roberts, Raspe & Blanton LLP. Roberts has practiced law as a litigator in complex commercial cases in Southern California for more than 30 years. Earned undergraduate degree from the University of California, Davis, where he was a football student-athlete, and his law degree from the University of Pacific's McGeorge School of Law. Term 1 expires August 2018.

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Gregory Sankey, *Commissioner of the Southeastern Conference (SEC)*. Chair of the Committee on Infractions. Oversees the SEC's championships staff. Former Southland Conference commissioner. Earned degrees from State University of New York College at Cortland and Syracuse University. Term 2 expires in August 2016.



Sankar Suryanarayan, *University counsel*. Responsible for providing legal advice to Princeton University's clients in a variety of areas, including employment (faculty and staff), student affairs, public safety and risk management, non-discrimination/affirmative action, athletics and the art museum. Earned undergraduate degree from the University of Pennsylvania and law degree from Georgetown University. Term 1 expires August 2016.

The COI continues to expand toward 24 members. As the roster indicates, the COI has been mindful and intentional to include members from the categories established in NCAA Bylaw 19.3.1 (e.g., former presidents, directors of athletics and former coaches). As identified in Parts IV and V of this report, caseloads have fluctuated greatly, thereby making it difficult to tailor expansion to meet scale. Further, as identified in Part I, volunteering on the COI is a significant commitment that requires time, training, preparation and objective decision making in order to maintain a quality infractions process. In order to appropriately vet potential candidates, the COI has been judicious and incremental in adding new members to the COI.

II. Internal operating procedures

The COI has promulgated approximately 140 internal operating procedures (IOPs), which address the COI's operations and are readily available to parties within the infractions process. Adoption of the EWG reforms removed many of the procedural components from former NCAA Bylaw 32 and established the expectation that the COI would address them and other processes in IOPs. NCAA Bylaw 19.3.6 requires the COI to "[f]ormulate and revise internal operating procedures and revise investigative guidelines." The COI has formulated its comprehensive IOPs to transparently address the nuances of the operations of the infractions process. The IOPs are available to member institutions at <https://www.ncaa.org/division-i-committee-infractions-operating-procedures>. IOPs cover COI operations such as immunity, prehearing procedural issues, monitoring the status of cases entering the COI docket, what constitutes the record of the case and, the modifying level and nuances surrounding implementing penalties. The Board has approved these IOPs as the COI has promulgated or modified them. The COI has also reviewed and provided feedback on a number of the enforcement staff's IOPs, which this Board has also approved. There are several important enforcement guidelines such as the enforcement staff's charging guidelines for head coach control and lack of institutional control that ongoing reviews are likely to address in the near future. Likewise, the COI is planning to propose an IOP that permits panels of three to decide smaller administrative cases. (See Attachment C.)

III. COI training

Driven by the need for consistent decision making and accounting for the transition to a panel structure from a single body that hear cases, the EWG codified COI training. NCAA Bylaw 19.3.7 established that

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one of the COI chair's duties is to preside over two meetings of the full COI each year. The COI has used those meetings as comprehensive training sessions to review past cases, understand the new penalty

structure, formulate IOPs, integrate new members into the COI and discuss the COI's operational and strategic needs and plans. Full COI trainings occurred in August 2013, December 2013, February 2014, August 2014, February 2015, August 2015 and February 2016. The EWG also anticipated that the COI and the Infractions Appeals Committee (IAC) would convene once a year. The IAC attended the COI's August 2013 and August 2014 trainings. They did not attend the August 2015 or February 2016 trainings; however, the chairs and select staff met in February 2016 to discuss increasing dockets and standards of review. The two groups continue working toward establishing strategic coordination and communication. A timely area for discussion between the COI and IAC is the standard of review on appeal for reversing a COI penalty, which limits reversal to an *abuse of discretion*. The standard should be a difficult standard to meet and one that does not promote second-guessing of penalties based on disagreement with the outcome, especially in light of the new penalty guidelines, while still allowing for a meaningful appeal process. The groups plan to continue these discussions at the COI's next training session in August 2016.

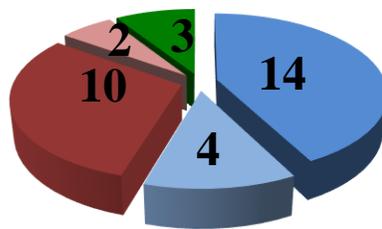
KEY PERFORMANCE INDICATORS

This section breaks down the COI's key performance indicators since August 2013 into eight general categories: I. Number of completed cases by track; II. COI docket portfolio; III. Hearing and decision release timeliness; IV. Violation data; V. Penalty data; VI. Appeal data; VII. Probation compliance reporting; and VIII. Decision length.

I. Number of completed cases by track

Number of Cases Decided by Panels by Case Track: August 1, 2013 to Present

■ SDR ■ SDR w/ Expedited ■ In-Person
■ In-Person (Accelerated) ■ Level III Appeal

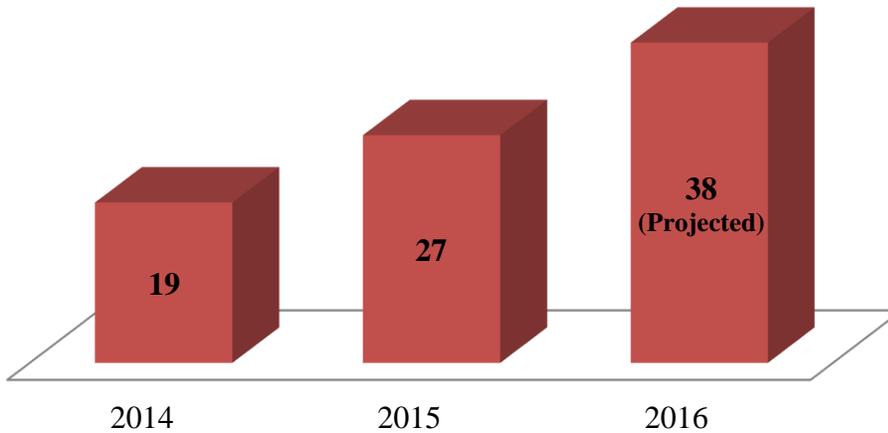


The summary disposition process was the most utilized track for handling an infractions case. The EWG reforms encouraged the use of this process where there was sufficient agreement between the parties and the nature of the case did not warrant a full hearing. There were also a significant number of cases resolved through a contested hearing. Only two cases utilized the accelerated hearing option, which requires a lesser complexity, scope and response timeline. Initially, there was a drop in cases coming into the system in 2013 as the enforcement staff concluded its efforts in rolling out the new model.

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II. COI docket portfolio

Division I COI Annual Docket Portfolio

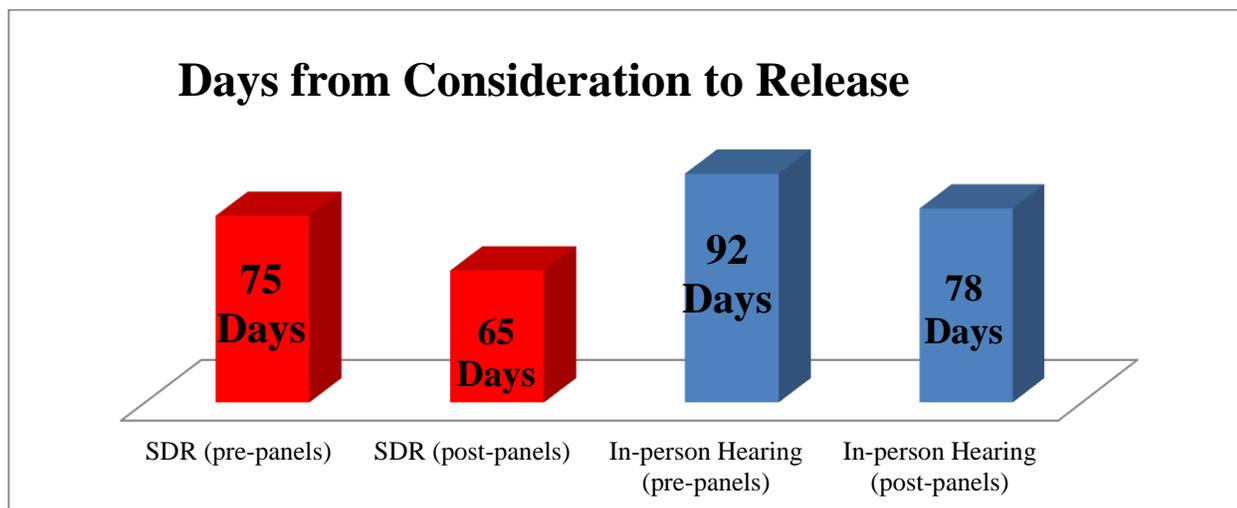


The COI is engaged in a case from the issuance of a notice of allegations, submission of a summary disposition report or appeal from a Level III show-cause order through final resolution, including appeal to the IAC. The 2016 projection includes predicted cases before the COI and known appeals but does not include potential appeals.

As more cases have moved from the investigative stage to review and decision, the COI has seen an increase in its docket portfolio in 2015 and 2016. The EWG anticipated one hearing session a month. At the session, a panel might hear two cases (i.e., one contested case and an SDR). The COI has had to generate more panels to accommodate timely review of SDRs and to accommodate hearings, some of which have included cases too large to pair with another case.

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III. Hearing and decision release timeliness



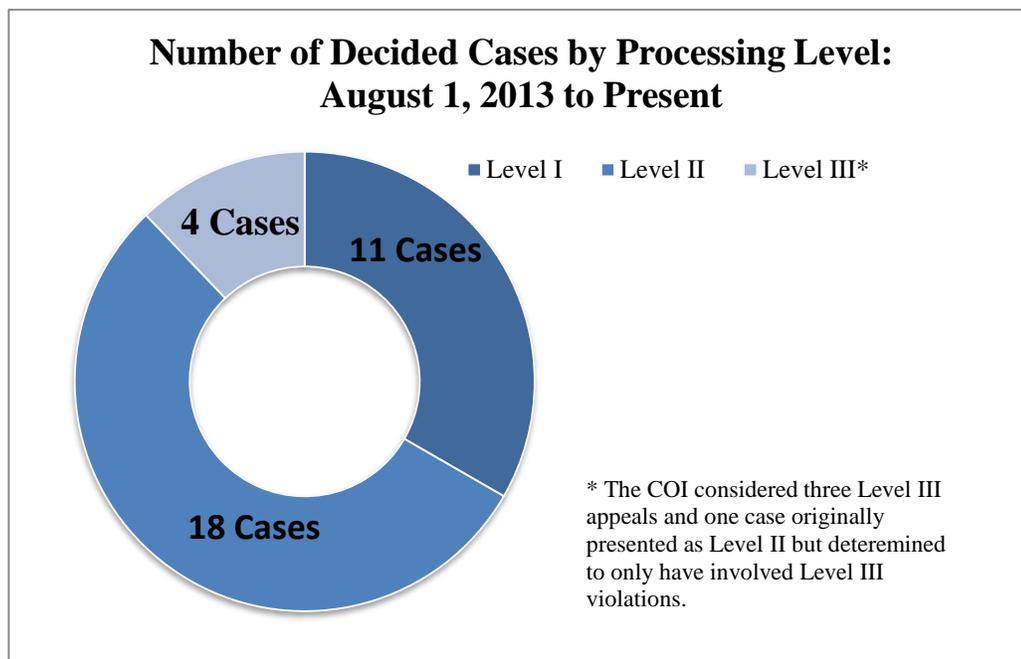
The COI is very conscious of facilitating a timely infractions process. The timeframe that the COI engages an infractions case is only a portion of the overall time and lifecycle of an infractions case. The COI hearing process is bookended by the enforcement staff's investigation and the IAC's appeal processes. The COI has worked to implement the new panel structure and to look for efficiencies in its processes. The COI has also collaborated closely with the enforcement staff on monitoring the overall docket by conducting monthly management meetings and collaborating on an IOP to facilitate moving cases forward. As a whole, the COI has cut the time to release a decision by 15 percent since implementation of the panel structure. The last six months have seen a drop in in-person hearing release time to 76 days and SDR release time to 37.5 days, an 18 percent and 50 percent decrease, respectively.

The time it takes the COI to issue a decision turns on a number of factors. The magnitude of the case, the number of other cases, other NCAA processes that must occur before release and other timing considerations affect the timetable. The EWG reforms set a goal of releasing a decision 30 days after the hearing. That timetable is possible for the summary disposition process or small contested cases where the enforcement staff and the parties have cleanly positioned a case that does not require COI follow-up. For purposes of calculating the time to release summary disposition cases, for example, the COI has not subtracted the time for the parties to respond to requests for clarification or for institutions and involved individuals to respond to proposed penalties, the latter of which occurs in most cases. Similarly, the number does not include two to three weeks of preparation and generating a panel for review. Also, for mid- to larger-sized cases (e.g., a large case might involve 10,000 pages of record material, 15 allegations, 10 parties and a multi-day hearing), the timetable is not practical to ensure a comprehensive, thorough and credible decision. Further, even with the panel structure, there are times when there are multiple overlapping panels and, where the OCOI staff might actively be engaging 10 cases at one time in the preparation, hearing or decision-drafting phases.

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Although the infractions process is the NCAA's unique, internal administrative process, the time it takes other adjudicative bodies to issue decisions is helpful to provide context. For example, the American Bar Association (ABA) Reference Models suggest intermediate courts of appeals should dispose of 75 percent of civil cases on appeal from trials within 290 days of initiation of the appeal with the court. Further, the segment of time from submission of briefing (for infractions cases the analogy would be when all materials are provided by the parties to the COI) to resolution appears to average more than 100 days.¹ For state courts of last resort involving appeals from civil trials, the time from oral argument (for infractions cases the analogy would be the hearing) to resolution averages 203 days.² In the criminal context, the average time to decide an appeals case after briefing is 107 days.³ In arbitration cases, the time from the hearing to the award is typically about 80 days, which includes submission of additional briefing. The arbitrator releases the decision in 30 days after receipt of the last information.⁴ Arbitration decisions, however, are often shorter and may not be as comprehensive as a judicial opinion or an infractions case. In an infractions case, the COI must make findings of fact, conclude whether violations occurred and prescribe penalties. Further, the parties typically cannot challenge an arbitration award, unlike an infractions decision where parties often challenge the facts or analysis, and the IAC often scrutinizes the amount of detail in a decision.

IV. Violation data



The majority of infractions cases during the review period had an overall processing level of Level II, which means the most severe violations in the case were at least Level II but did not involve a Level I

¹ Caseload Highlights, Court Statistics Project, Caseload Highlights, Volume 14, Number 1, March 2007.

² Caseload Highlights, Court Statistics Project, Caseload Highlights, Volume 14, Number 2, July 2007.

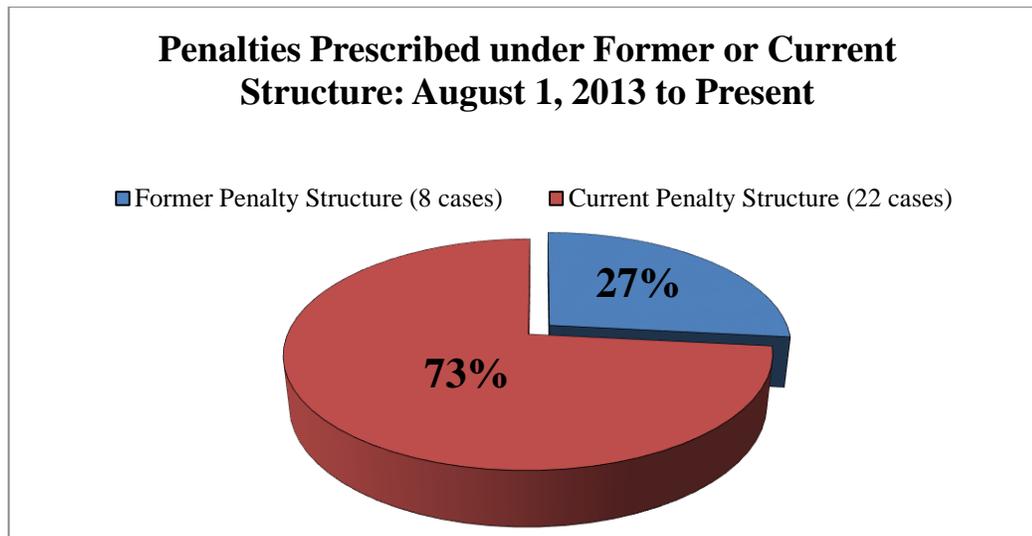
³ Criminal Appeals in State Courts, U.S. Department of Justice, Office of Justice Programs, September 2015.

⁴ AAA Arbitration Roadmap, A Guide to AAA Arbitration.

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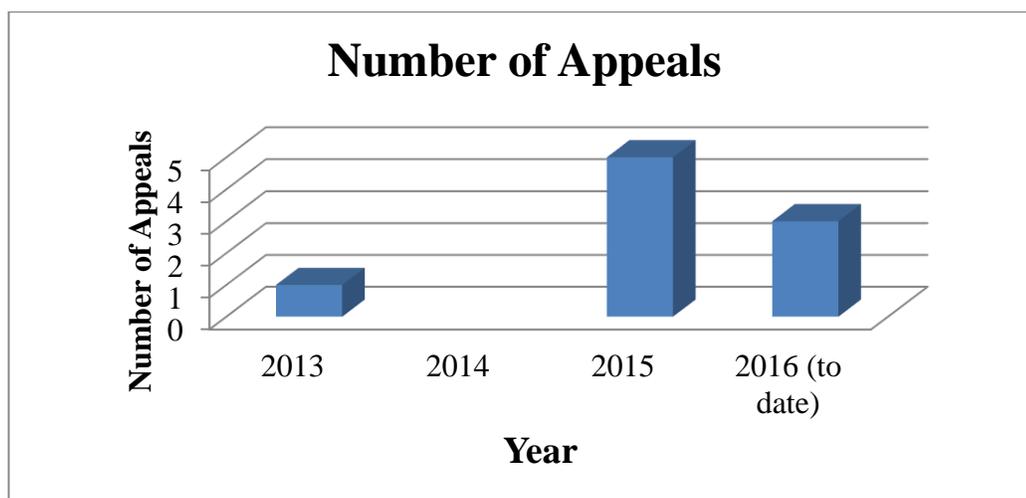
violation. There was a significant number of cases that were processed as Level I, which means the cases included at least one Level I violation.

V. Penalty data



The majority of cases the COI decides now are under the new penalty guidelines. As time has elapsed from the October 30, 2012, notice date for the new penalty structure, fewer cases have involved the COI conducting a leniency test to determine whether the old penalty structure or the new penalty guidelines applied. For Level I cases that required a leniency test, the old structure was more lenient. For some Level II cases that required a leniency test, the penalty guidelines were sometimes more lenient. Of the 33 decided cases, three did not involve penalties. The COI reversed one head coaching suspension from a Level III appeal, divested jurisdiction of a second case and permitted the parties to withdraw a third.

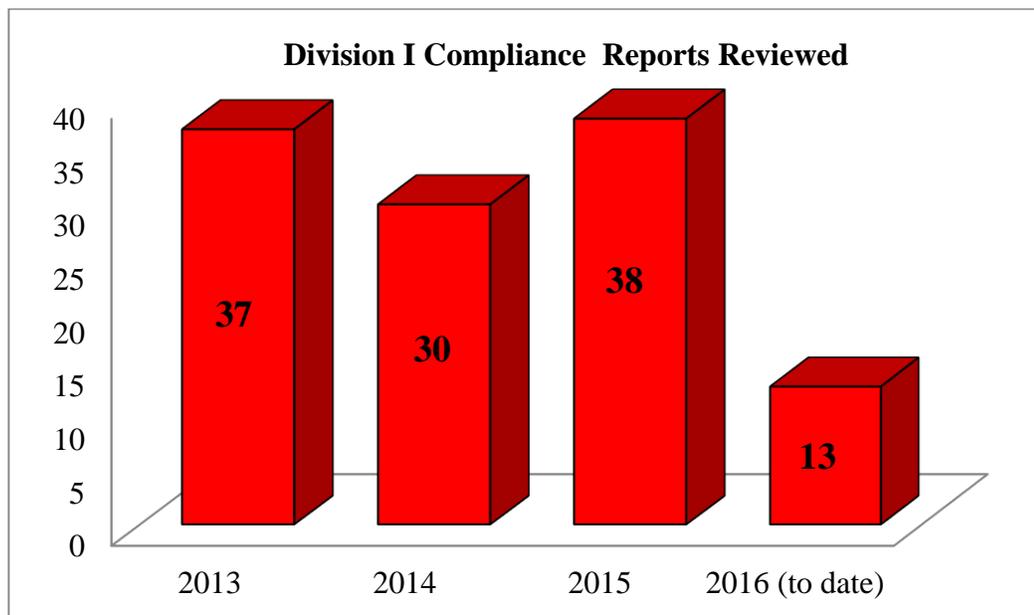
VI. Appeal data



KEY PERFORMANCE INDICATORS

The COI saw an increase of appeals in 2015, and 2016 will likely continue that trend. One infractions case can lead to several separate appeals by the institution and involved individuals. Appeals require significant work by the COI and OCOI to brief the appellate issues and attend oral arguments if the case is not decided on the appellate filings. The COI anticipates a trend of increasing appeals based on challenges to level and classification and increased penalties under the penalty guidelines. Often parties on appeal raise pre-penalty guideline cases, which are of diminished relevance. The COI has also engaged the Infractions Appeals Committee to discuss standards of review applicable to penalties. The hope is that the two committees will make a joint proposal to help clarify this issue.

VII. Probation compliance reporting



Probation is a key penalty because it allows for monitoring and encouraging compliance. Historically, probation was a normal penalty in a major infractions case. Probation is a core penalty under the penalty guidelines. The last several years there have been approximately 30 institutions on probation from an infractions case. As part of the probation process, the OCOI conducts a preliminary review of an institution's compliance submissions after an infractions case to ensure that the institution is complying with the prescribed penalties. The first year of probation, an institution submits a preliminary report and at the end of the year, an annual report. Annual reports are intended to be comprehensive demonstrations of penalty implementation and compliance programs. If there are any issues with preliminary or annual compliance reports, the COI leadership reviews them and proposes appropriate action.

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VIII. Decision length

In addition to working toward the most efficient production of an infractions decision, an ancillary goal of the EWG and the COI was to increase the readability of decisions by focusing on structure and more efficiently capturing the COI's decision. These changes are intended to produce decisions that are credible, demonstrate accountability and function as an educational tool. During the review period, the COI and the OCOI staff have structured decisions so that the factual findings form a chronological narrative and the analysis clearly applies the bylaws to the facts. In doing so, the COI and OCOI have cut the overall length of decisions by approximately 30 percent, meeting the EWG's goal of shorter, more concise infractions decisions.

CHALLENGES TO THE MODEL

This section addresses the four principal areas that challenge the infractions process: I. Model expectations; II. Cases and docket control; III. Balancing COI work; and IV. Appeal docket and standards.

I. Model expectations

A primary challenge to the infractions process is achieving a shared expectation and understanding by the membership regarding what the infractions process model is designed to accomplish and how it accomplishes it. The NCAA has reviewed portions of the infractions process no fewer than four times over the last twenty-five years (e.g., Special Committee to Review the NCAA, Enforcement and Infractions Process Report ("Lee Report") (1991); Report and Recommendations to the NCAA Special Internal Review Committee ("Duff Report") (2006); NCAA Division I Committee on Infractions and NCAA Division I Infractions Appeals Committee Clarification Task Force ("Stoner Report"); and NCAA Working Group on the Collegiate Model- Enforcement ("EWG Report") (2012)). Out of these reviews and recommendations came process and structure changes.

Over time the stakes have increased and the model has become more formal and more adversarial (e.g., use of counsel, ballooning documentation and the growing overlay of legal concepts). While increasing transparency and consistency, this change has lost some of the flexibility and cooperative spirit of a non-legal, non-adversarial model based on cooperation, while also cabining some of the benefits of a traditional legal model (e.g., compelled attendance and live witnesses). The shift also blunts some of the benefits of a peer review model that is predicated on cooperation and leveraging campus experience. An institution's engagement with the process is often benchmarked against reputational harm and timeliness.

All stakeholders in the infractions process must continue to address the expectations question. However, the results of the EWG reforms are just now becoming apparent. In the COI's experience with the reforms, the best approach is to address and modify discrete areas as they become apparent, as opposed to wholesale changes.

II. Cases and docket control

Coming out of the EWG reforms, the concept was to have one hearing session a month (instead of the previous every-other-month schedule) to hear a contested hearing and potentially review an SDR. Four principal factors affect the COI's ability to scale, demand and efficiently review and decide cases: (1) **number** of cases at any given time on the COI's portfolio of cases, (2) **docket distribution** (i.e., how the cases are grouped when ready to be heard), (3) **magnitude** of individual cases and (4) how well cases are **positioned** after the enforcement staff's investigation and charging. With regard to the first area, if too many total cases enter the system for the COI to hear, the COI cannot schedule or efficiently review the cases. The second area involves how the cases are grouped together. Even if the total docket of cases for a year is manageable, if too many cases are delivered at one time, the COI cannot efficiently review the cases. The third area relates to the fact that all cases are not equal in magnitude and complexity. Some cases have involved multi-year investigations, double-digit allegations that spanned nearly a decade and case records approaching 10,000 pages. The frequency of larger magnitude cases has increased. Large cases require more of the COI's time to prepare for the hearing and to issue a suitably thorough, comprehensive and timely decision. Finally, evidentiary gaps and allegation framing affect the COI's ability to efficiently decide cases. The need for follow-up information or reframed allegations delay resolution. For all areas, the COI, OCOI and enforcement staff have collaborated to address these issues

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through periodic docket reviews, using prehearing processes to help move cases along and postmortem review after a case's conclusion to determine where the process could be improved.

III. Scope of COI work

The COI is a peer review model that draws on volunteers from campuses, conference offices and the public. A medium-large magnitude case may require over 40 hours of preparation time for a COI member, three days for travel and conducting the hearing and additional time to review decision drafts. The workload increases if the COI member is a chief hearing officer responsible for running the hearing or handles the case on appeal. Further, there are times when some COI members also have to review institutions' probation submissions detailing how they are complying with prescribed penalties. Often COI members are engaged with multiple cases at different phases of the infractions process. This then requires COI members to address multiple cases at one time. Finally, there is ongoing COI operations work (e.g., managing the infractions docket, implementing IOPs, weighing in on legislative proposals and other committee work). Given increasing infractions cases and COI work (i.e., caseloads and operational work), the COI should be supported by an OCOI staff and an overall organizational structure that helps the COI and all other stages of the infractions process meet their work for the membership.

IV. Appeal docket and standards

There are two areas for future strategic coordination and opportunity between the COI and the Infractions Appeals Committee (IAC), the membership body that decides appealed infractions cases: the infractions caseload flowing from the COI to the IAC and the applicable appeals standards. The chairs for the COI and IAC met in February to discuss these issues.

With regard to caseload, infractions cases do not necessarily end at the COI. Since the 1990s, there has been a separate IAC with jurisdiction to review whether the COI erred in concluding violations occurred, and whether the COI abused its discretion in prescribing penalties. As more cases begin to move through the COI segment of the infractions process, more cases will ultimately reach the IAC, which currently sits as a single body of five. The COI has seen an increase in the number of cases it has handled, as well as in future projections.

Regarding appeals standards, there is an opportunity for the COI and IAC to propose a shared standard to the membership for when the IAC can overturn COI penalties. Further, there is an opportunity to appropriately recognize the effect of the new penalty guidelines, which structures the COI's decision making for prescribing penalties.

There is a need to explore the meaning of the abuse of discretion standard and have the bylaws define the standard. The current standard is that "[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 panel abused its discretion." However, there is no bylaw definition of the abuse of discretion standard. Two issues related to penalties often arise on appeal: (1) what it means to have abused discretion and (2) whether the appeals process anticipates the appellate body refashioning penalties to what it believes to be the correct penalty. As to the first, the abuse of discretion standard is a high standard and cannot simply be a disagreement with the outcome, or that a different body would have considered some other factor. If abuse of discretion were not a highly deferential standard, it would strip the COI of discretion and diminish the standard

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established in the bylaw. At least one recent IAC decision has recognized the need for a deferential standard. With regard to the second, if the appellate body can simply disagree with the prescribed penalties and modify them, it collapses the entire infractions case into the appeal and undermines the purpose of limited appellate review.

There is also a need to understand the effect of the new penalty guidelines with regard to the effect of the relevance of past cases and whether there should be a rebuttable presumption that a penalty within a guideline range is appropriate when there is no challenge to level or classification. With regard to the effect of past cases, a starting point should be that all cases are unique in their facts. Further, the membership passed the penalty guidelines to be an increase to historical penalties. Regarding a penalty that is within a penalty guideline range, a rebuttable presumption serves the purpose of acknowledging that the membership approved the penalty guidelines as a set of appropriate penalties. A rebuttable presumption limits spending resources on challenges to the COI's determinations that fall within a guideline range. At least one recent IAC decision has included language that is consistent with this concept.

STRATEGIC INITIATIVES

This section addresses six strategic initiatives intended to help meet the challenges to the infractions process. I. Infractions process education; II. Focus on timeliness and docket management; III. Managing voluminous records; IV. Structured, consistent and credible decision making; V. Leveraging data; and VI. Projecting first-rate hearing process.

I. Infractions process education

The COI and OCOI have participated in a number of tailored outreach efforts to increase the membership's and the general public's awareness of the infractions process. Specifically, members of the COI and OCOI staff have presented at NCAA Regional Rules Seminars, conference meetings and with individual athletics administrators when on campus. The OCOI plans to rollout presentations at various athletics coaching associations. As part of this effort, the COI and OCOI staff have worked with the NCAA's public and media relations group to develop effective and succinct materials that explain the infractions process. Moreover, the goal is to move some metric information to accessible dashboards.

II. Focus on timeliness and docket management

Timely resolution of infractions matters remains a preeminent membership concern. Although the COI does not and cannot dictate the enforcement staff's investigations, the COI and OCOI staff have taken some steps to more closely monitor the infractions docket. The COI and OCOI proposed monthly docket management meetings with the enforcement staff to review the status of cases within the case pipeline. Further, in several cases, the COI chair specifically utilized a status conference involving all parties to facilitate moving a case toward conclusion. Also, the COI and OCOI staff worked with the enforcement staff in the enforcement staff's development of an IOP that memorializes a status conference concept, while respecting the separation between the COI and the enforcement staff. Under this status conference IOP, the enforcement staff sets a target processing date. If that date passes, the parties discuss the case's processing status with the COI chair to help ensure the case moves forward in a timely fashion. Finally, the OCOI is working toward the ability to generate real-time reporting on key performance metrics, including timeliness.

The COI also proposes amending NCAA Bylaw 19 to permit generating three-member panels to review administrative cases. The COI also proposes a corresponding IOP. See Attachment C. The legislative change will allow the COI to efficiently process these cases and utilize resources for more complicated cases.

III. Managing voluminous records

The COI has implemented a flexible page-limit operating procedure to help control voluminous filings. Further, the COI, OCOI and the enforcement staff are actively working to focus hearings on the most relevant and impactful information produced from an investigation and supporting or rebutting allegations. The OCOI generates panels as early as possible to allow COI members to review material.

IV. Structured, consistent and credible decision making

The COI has focused on structured, consistent and credible decision making. The focus centers on four primary means: (1) application of the penalty guidelines, (2) training, (3) preparation and deliberation tools and (4) a focus on persuasive decision drafting.

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With regard to the first area, the COI continues to apply penalty guidelines. Through its application of the penalty guidelines, the COI has identified issues with the upper and lower ranges of the penalty guidelines. Specifically, some of the upper ranges are too high and some of the lower ranges are too low. The changes can still accomplish the EWG goal of significant and consistent penalties; however, the changes grant necessary flexibility. See Attachment D, Proposed Revised Penalty Guidelines.

Regarding the other three areas, as mentioned previously in this report, the COI continues to train new and existing members through a robust onboarding curriculum. Also, the COI and the OCOI continue to develop preparatory and deliberation tools to ensure structured, thorough and efficient review of infractions cases. Finally, the COI and OCOI have reformed the format of infractions decisions to facilitate three goals of an infractions decision: (1) convey accountability for violations of NCAA legislation; (2) educate the membership on the pitfalls of conduct that violates NCAA legislation; and (3) credibly, and persuasively convey the COI's decision making to the membership and the general public. To achieve these goals, the changes have focused on creating an understandable and cohesive factual narrative of the case, shortening the average length of decisions by approximately 30 percent and writing in a more straightforward, direct style.

V. Leveraging data

The COI has focused on two key sources of data regarding infractions cases. First, the COI has commissioned an objective analysis of past infractions cases prior to the EWG reforms regarding important violation and penalty categories. Second, the COI is implementing a case management system (CMS) to function as an effective collaboration space for COI work and the data underlying COI decisions.

Some in the membership (and the general public) believe that the COI's penalties were inconsistent. In light of that, and to obtain baseline data to benchmark future analyses on infractions outcomes, the COI engaged Temple University's Sport Industry Research Center to independently analyze violations and penalties from 1953 to the start of the new penalty structure. See Attachment E. The study concludes analyses based on penalty type, and sport(s) involved revealed that infraction types and case characteristics explained between 25 percent and 70 percent of the variance in penalty severity indicating relative consistency in prescribed penalties. The majority of unexplained variance is likely attributed to the magnitude of the infractions and other case specific factors. For the most part, members of an autonomous conference were not treated differently than members of other conferences.

With regard to CMS, the COI and the OCOI have begun rolling out the CMS that allows the COI to structure its work (and the OCOI's work in support of the COI), move toward greater information security and capture data regarding violations, penalties and timeliness of work. The goal is to produce key performance indicators from the data underlying the COI's work (e.g., important violation categories, penalty data and timeliness for various stages of the COI's processes).

VI. Projecting first-rate hearing process

The COI and OCOI have worked with national office stakeholders to advance the technology support provided to the COI. In addition to the CMS, the COI has sought and begun to explore and implement hearing room technology. Specifically, the COI is moving toward a paperless platform that allows for more immediate access to voluminous record information and minimizes the logistics and costs of

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shipping those records. Each COI member has a tablet and dual monitors to access and review case materials during an infractions hearing.

