

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

October 28, 2016

Report No. 428

Former Head Men’s Basketball Coach

University of Hawaii, Manoa

Honolulu, Hawaii

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

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## **I. INTRODUCTION.**

The former head men's basketball coach at the University of Hawaii, Manoa, 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 report, the Infractions Appeals Committee addresses the issues raised by the former head men's basketball coach (hereinafter referred to as former head coach).

## **II. BACKGROUND.**

On December 22, 2015, the Committee on Infractions issued Infractions Report No. 428 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. [December 22, 2015, issue of The NCAA News]

This case centered on violations of NCAA bylaws governing unethical conduct and promotion of an atmosphere for compliance.

After the Committee on Infractions issued its report, the former head coach filed a timely Notice of Appeal January 6, 2016. A written appeal was filed February 8, 2016. The Committee on Infractions filed its Response March 24, 2016. The former head men's basketball coach filed his Rebuttal to the Committee on Infractions Response April 11, 2016. The case was considered by the Infractions Appeals Committee August 20, 2016 (see Section VIII below).

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

See Committee on Infractions decision for University of Hawaii, Manoa, Page Nos. 16 through 19. A copy of the report 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 University of Hawaii, Manoa Page Nos. 26 through 27. A copy of the report may be accessed via LSDBi at the following link: <https://web3.ncaa.org/lsdbi/>.

## **V. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS.**

The Committee on Infractions imposed a show cause order because of the involvement of the former head coach in violations. The show cause order imposed on the former head coach is set forth in Section VII.5 of the Committee on Infractions infraction decision regarding the University of Hawaii, Manoa:

VII.5. The former head coach allowed and instructed DOBO 1 to engage in impermissible coaching activities. Further, he failed to report a potential violation of NCAA legislation, resulting in student-athlete 3 competing while ineligible. Finally, the former head coach encouraged members of the men's basketball team to not report a potential violation of NCAA rules to the institutional administration. By his actions, the former head coach engaged in unethical conduct and failed in his duty to promote an atmosphere of compliance in the men's basketball program. He was ultimately responsible for the actions of his staff. Therefore, the former head coach will be informed in writing by the NCAA that the panel prescribes a three-year show-cause order pursuant to NCAA Bylaw 19.9.5.5. The show-cause period shall run from December 22, 2015, through December 21, 2018. The terms of the show cause are as follows:

- a. Each year he is employed by an NCAA member institution during the period of the show cause, the former head coach shall attend an NCAA Regional Rules Seminar;
- b. During the first year that the show cause is in effect, or the first year that the former head coach is employed by a member institution during the show-cause period, the former head coach shall be suspended from all coaching duties for the first 30 percent of the season, not counting exhibition games. Any institution that employs the former head coach during the term of the show cause shall adhere to this penalty. If the employing institution does not agree to these restrictions, it shall appear before a panel and show cause why the restrictions should not apply.

The provisions of this suspension require that the former head coach not be present in the arena where the games are played and shall not have any contact or communication with members of the men's basketball coaching staff and student-athletes during the suspension period. The prohibition includes all coaching activities for the period of time which begins at 12:01 a.m. the day of the first regular season game and ends at 11:59 p.m. on the day of the game that constitutes the end of suspension period. During that period, the former head coach may not participate in any activities including, but not limited to, team

travel, practice, video study and team meetings. The results of those contests from which the former head coach is suspended shall not count in the former head coach's career coaching record.

#### **VI. ISSUES RAISED ON APPEAL.**

In his written appeal, the former head coach asserted that the findings of violations against him should be set aside because they are clearly contrary to the evidence presented, and the facts found do not constitute a violation.

#### **VII. APPELLATE PROCEDURE.**

In considering the former head coach's appeal, the Infractions Appeals Committee reviewed the Notice of Appeal; the transcript of the institution's October 15, 2015, hearing before the Committee on Infractions; and the submissions by the former head coach and the Committee on Infractions referred to in Section II of this report.

The oral argument on the appeal was held by the Infractions Appeals Committee August 20, 2016, at the Hyatt Hotel in Portland, Oregon. The former head men's basketball coach was present and was without counsel. The Committee on Infractions was represented by the appeal coordinator for the NCAA Division I Committee on Infractions, the director of the Committees on Infractions, as well as the associate directors of the Committees on Infractions. Also present were the managing director of enforcement, the associate director of enforcement [by phone] and the director of legal affairs/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 appeal cases, the Infractions Appeals Committee may overturn factual findings and conclusions that one or more violations occurred only if:

- a. The hearing panel's finding clearly is contrary to the evidence presented to the panel;
- b. The facts found by the hearing 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 hearing panel would not have made the finding or conclusion. [NCAA Bylaw 19.10.1.2]

The hearing panel determines the credibility of the evidence.

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. [Bylaw 19.10.1.1]

As we stated in the Alabama State 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]

In this case, the former head coach has asked the Infractions Appeals Committee to set aside the determination of the Committee on Infractions, which found the former head coach acted in such a manner that his actions rose to the level of unethical conduct.

In order for this committee to grant the former head coach's appeal, this committee must be able to establish that one of the three conditions above were met by the evidence the former head coach presented. The former head coach expressed quite clearly that he felt that having the label of being unethical was something that was beyond his expectation and he did not believe it was warranted. While he was clear in his presentation that he understood and agreed that he had done some things wrong that violated the NCAA rules and bylaws; he did not believe his actions rose to the level of being unethical. [Written Appeal Page No. 2]

The former head coach's major argument focuses on the specific reading of Bylaw 10.1(d), which allows punishment of an individual for knowingly furnishing or knowingly influencing others to furnish the NCAA or the individual's institution false or misleading information. The former head coach states he did not do this. While he admits that the evidence might show that a determination of lack of head coach control over his program might exist, the evidence does not support a determination of knowing, intentional, unethical conduct in violation of Bylaw 10.1(d).

This committee was sympathetic to the former head coach's concern with being labeled as unethical and how this may impact him personally or professionally in the future. Before discussing the outcome of this appeal, we would like to make it clear that the members of this committee, and we believe members of the Committee on Infractions, do not take any of this lightly and do not wish to label or brand an individual or ruin their lives or careers.

If one is found to have violated an NCAA bylaw of unethical conduct, it is just that and nothing more. A finding of unethical conduct in conducting NCAA activities is not intended to paint an individual as bad or someone to be avoided at all cost; it is simply a determination that, in this instance, the individual acted unethically. While we understand it might be a tough pill to swallow and something that one wishes was not a part of their record, we do want to make it clear that any finding that an individual acted unethically does not and should not label him or her as a terrible person. It is believed that the individual can certainly overcome the status by future performance. Now to our determination.

In stating his case, the former head coach is correct to look to Bylaw 10.1(d) but also must realize that Bylaw 10.1, which requires all institutional athletics staff members to act in an ethical manner, is greater than just subpart (d). In fact, there are subparts (a)-(j), as well as language in the opening of Bylaw 10.1, which clearly states that while the subparts are examples of unethical conduct, that the definition of unethical conduct, while including them, is clearly not limited to them. The former head coach fails to address this and only points to the subpart (d) examples and hangs his position on the concept of knowingly furnishing or knowingly influencing others to furnish the NCAA or the institution false or misleading information. The Committee on Infractions is correct in pointing this out to our committee; however, we really do not need to make our determination on this point although it is important to note. [Committee on Infractions Response Page Nos. 12 through 16]

This committee believes that, in these matters, the Committee on Infractions must be the body to hear all of the evidence, and, when faced with information that is contradictory, it must look at all of the material and testimony to decide which is correct. As stated in the University of Mississippi appeal decision:

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]

Therefore, this committee finds no grounds for overturning the finding of violations or the imposition of the penalty.

## **IX. CONCLUSION.**

Finding of violation IV.c.2 and penalty VII.5 are affirmed.<sup>1</sup>

NCAA Infractions Appeals Committee

David Williams, chair  
Ellen Ferris  
W. Anthony Jenkins  
Patti Ohlendorf.

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<sup>1</sup> 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 head coach and ends with the public release of the committee's decision. Therefore, the former head coach's 's affirmed penalty VII.5 (three-year show cause order) shall be applied October 28, 2016, through October 27, 2019.