The NCAA Infractions Enforcement Process - Role of Counsel

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For schools and coaches involved in the NCAA infractions enforcement process, the process can be confusing, labor-intensive, and reputation and career threatening. Legal counsel can help schools and coaches navigate the process and mitigate its negative consequences. As in other practice areas, the assistance that legal counsel can provide to schools and coaches regarding the NCAA infractions enforcement process includes giving proactive risk management guidance, investigating potential misconduct, researching and applying legislation and case precedent, preparing clients for interviews and hearings, and advocating clients’ positions to opposing parties and fact finders.

OVERVIEW OF THE NCAA INFRACTIONS ENFORCEMENT PROCESS

The NCAA is a voluntary association of colleges and universities that governs college athletics competition among its members. NCAA schools and their coaches agree to abide by NCAA bylaws which address issues such as amateurism, recruiting, financial aid, academic eligibility, and parameters of practice and competition. NCAA bylaws also establish procedures whereby the association enforces compliance with its bylaws. These compliance procedures are generally referred to as the “infractions enforcement process.”

A school or coach becomes involved in the infractions enforcement process when the school internally discovers a potential bylaw violation or when the NCAA enforcement staff, the association’s staff tasked with investigating potential bylaw violations, becomes aware of a potential violation. Once the infractions enforcement process begins, its course depends upon whether the school or the enforcement staff concludes that a violation occurred and, if so, the perceived severity of the violation.

Currently, violations are categorized as “secondary” or “major.”

If a secondary violation appears to have occurred, then generally, a school submits a self-report regarding the violation and resulting self-imposed sanctions to the enforcement staff, and the enforcement staff concludes the case by accepting the school’s report, sometimes with the imposition of additional sanctions.

If a major violation appears to have occurred, then the enforcement staff issues a Notice of Allegations setting forth the alleged violation, and the process continues on one of two paths: Summary Disposition or a Committee on Infractions hearing.

In Summary Disposition, the enforcement staff, the school, and any coach named in the Notice of Allegations agree on the underlying facts and appropriate sanctions. Then, they jointly submit a report about the violation and resulting self-imposed sanctions to the Committee on Infractions. If, as usually occurs, the Committee accepts the report (sometimes with additional sanctions the school and involved coaches find acceptable), then the case is concluded.
The Committee on Infractions hearing path generally occurs when violations are particularly egregious or when the enforcement staff and the school or an involved coach cannot agree about the existence or scope of a violation. The case is then presented for the Committee’s consideration at a hearing. When the Committee publishes a finding, either a school or an involved coach can appeal the finding to the Infractions Appeals Committee; however, the grounds for appeal are very narrow. NCAA bylaws do not provide for further appeals from an Infractions Appeals Committee decision. If sanctions are imposed, a school must document its compliance with those sanctions.

NCAA bylaws regarding the “obligations of membership,” the “cooperative principle,” and “unethical conduct” set conduct expectations for schools and coaches during the infractions enforcement process. Failure to meet these expectations can result in increased sanctions, so the enforcement staff possesses significant investigative leverage during the infractions enforcement process, even in the absence of subpoena power. Generally, these bylaws require schools and coaches to affirmatively assist the enforcement staff with the investigation of possible violations, even when such assistance will establish misconduct. An important task of legal counsel during the infractions enforcement process is to help the client meet the association’s investigative conduct expectations and avoid additional sanctions for perceived uncooperativeness.

TYPES OF ASSISTANCE LEGAL COUNSEL CAN PROVIDE

The assistance legal counsel can provide regarding the NCAA infractions enforcement process depends upon whether the client is a school or a coach as well as the phase of the process. Generally, the process can be considered in four phases: (1) proactive, (2) NCAA investigation, (3) Committee on Infractions hearing, and (4) post-hearing.

Proactive Phase

The proactive phase actually occurs prior to the initiation of the infractions enforcement process. It consists of the period in which a school or coach does not possess information indicating a major violation.

Assistance for Schools

The period in which a school does not possess information indicating a major violation provides an opportunity for legal counsel to help a school proactively reduce its violation risks. Legal counsel can analyze and audit a school’s NCAA compliance procedures, recommend best practices, and educate school administrators and coaches about recent Committee on Infractions decisions and other NCAA compliance developments. Such an approach reduces the likelihood of inadvertent violations; deters intentional violations; increases the likelihood of timely detecting violations; and
demonstrates institutional commitment to NCAA compliance, which may mitigate sanctions resulting from violations that occur and reduce the risk that the Committee on Infractions finds “failure to monitor” or “lack of institutional control” by the school.

If a school discovers information suggesting a violation, legal counsel can help the school organize and conduct a preliminary inquiry regarding the existence and severity of the potential violation in a manner that is consistent with enforcement staff procedures and does not prejudice any future investigation the enforcement staff may conduct. If the preliminary inquiry indicates that no violation occurred, the involvement of legal counsel protects the school’s leaders against subsequent charges of poor oversight if later developments demonstrate that a violation actually occurred. If the preliminary inquiry indicates a likely secondary violation, the assistance of outside counsel with conducting the inquiry, drafting a well-written report, and suggesting appropriate self-imposed sanctions increases the chance that the enforcement staff will conclude the case by accepting the school’s report. If the preliminary inquiry indicates a major violation which must be reported to the enforcement staff, the school’s engagement of legal counsel to conduct the inquiry demonstrates a commitment to NCAA compliance, with the benefits noted above. Additionally, by participating in the preliminary inquiry, legal counsel can most effectively advise a school about possible corrective and remedial measures.

Assistance for Coaches

As with schools, the period in which a coach does not possess information indicating a major violation provides the opportunity for legal counsel to help the coach proactively reduce his violation risks. Legal counsel can update the coach and his or her assistants about NCAA compliance developments, monitor the coach’s implementation of enforcement staff suggestions for demonstrating “coach control,” and serve as an additional resource from which the coach can seek NCAA compliance advice. This approach reduces the likelihood of a coaching staff inadvertently violating NCAA bylaws, and it helps a coach demonstrate an effort to “promote an atmosphere of NCAA rules compliance.” Consequently, if a violation still occurs in the coach’s program, the Committee on Infractions will be less likely to find a “lack of coach control” and more likely to mitigate the severity of the sanctions imposed upon the coach and program.

If a coach becomes aware of a potential violation, legal counsel can help the coach properly report information in a manner that meets the coach’s obligations under NCAA bylaws and the coach’s employment agreement. If the information clearly indicates a secondary violation, legal counsel can help the coach evaluate potential self-imposed penalties and propose those penalties to appropriate school leaders. If the information indicates a potential major violation, legal counsel can advise the coach about how to interact with relevant individuals so as to prevent new violations but not prejudice likely institutional or enforcement staff investigations and not appear to be covering-up existing violations. At this phase of the process, legal counsel can also educate the coach about the investigative process that is likely to occur and discuss best-case and worst-case outcomes.
**NCAA Investigation Phase**

During the NCAA investigation phase, the enforcement staff investigates and analyzes whether a violation occurred and, if so, the severity of the violation. This phase starts when a school notifies the enforcement staff about a potential major violation, when the enforcement staff decides to independently review a school’s report of a secondary violation, or when the enforcement staff notifies a school about information indicating a potential major violation. Although NCAA bylaws authorize the enforcement staff to investigate a potential violation up to the date of a Committee on Infractions hearing, this phase generally ends when the enforcement staff publishes its Notice of Allegations.

**Assistance for Schools**

The NCAA investigation phase of a major violation case regularly involves conducting dozens of interviews and reviewing thousands of pages of documents. Even schools with well-resourced athletics departments and in-house legal teams seldom have sufficient on-campus personnel to fully and effectively participate in the investigative process. This is particularly true when the participation of some school administrators must be limited due to their possible involvement in or knowledge of a potential violation or their oversight responsibility for the people or program being investigated. For practical and perception reasons, a school generally benefits from conducting a “joint” or “cooperative” investigation with the enforcement staff. Consequently, legal counsel can greatly assist a school simply by serving as the school’s project-dedicated, primary representative in the investigation.

The NCAA’s expectations regarding a school’s conduct during the infractions enforcement process obligate a school to facilitate enforcement staff interviews with employees, student-athletes, and third parties; to provide academic, financial, phone, and e-mail records as well as other institutional documents; to declare ineligible and withhold from competition student-athletes if information indicates their involvement in a violation; to report additional violations uncovered during the investigation; and to maintain confidentiality about the investigation. Broadly, the role of legal counsel in this phase is to facilitate a thorough investigation that demonstrates the school’s cooperation and to keep senior school leaders appropriately informed within the bounds of the NCAA’s confidentiality requirements.

Beyond merely facilitating enforcement staff interviews, legal counsel can educate school employees and student-athletes who are going to be interviewed about interview procedures, particularly the right to personal legal counsel. During enforcement staff interviews, legal counsel can ask follow-up questions. Legal counsel can suggest additional interviews to the enforcement staff, particularly if those interviews could elicit mitigating information. If the enforcement staff declines to conduct such additional interviews, then legal counsel can independently pursue them. In regard to document production, legal counsel can help a school gather or produce information requested by the enforcement staff and present the material in an organized manner.
If the enforcement staff’s investigation reveals serious flaws in a school's compliance procedures or serious misconduct by a school’s employees, student-athletes, or boosters, legal counsel can provide objective analysis regarding the prompt implementation of corrective and remedial measures, which may include employment actions, withholding student-athletes from contests, disassociating boosters from the school, and enhancing the school’s compliance procedures. In particular, legal counsel can help a school appropriately balance (i) the need to act decisively to prevent additional violations and to reinforce the importance of NCAA compliance and institutional control versus (ii) the need to comply with the requirements of Due Process, the provisions of applicable employment agreements, and other relevant policies and standards.

Legal counsel should regularly discuss investigative developments and share analysis about those developments with the enforcement staff in order to shape the publication of a Notice of Allegations that accurately reflects the nature and scope of conduct revealed during the investigation. For example, legal counsel can advocate that a violation is secondary rather than major or that a school's compliance oversights demonstrate failure to appropriately monitor an issue but not a lack of institutional control. This role is increasingly important because a permissive charging standard permits the enforcement staff to allege violations which are not strongly supported. In turn, Notice of Allegations contents regarding public school (and even private schools) are increasingly reported by the media and are considered as conclusions or findings by the public because NCAA bylaws prohibit a school from publicly commenting about the merits of the allegations.

**Assistance for Coaches**

A threshold issues that legal counsel can help a coach analyze during the investigation phase of a major infractions case is the extent to which the coach wants to participate in the process. A coach employed at a NCAA school is required to fully cooperate. Although a coach who is no longer employed at a NCAA school is also expected to cooperate and can face sanctions for non-cooperation, the coach may decide that the burden of participating in the process outweighs likely non-cooperation sanctions.

Even for a coach who fully cooperates in the infractions enforcement process, the coach's involvement in the investigation phase of a major violation case is limited to participating in his own enforcement staff interviews and providing documents requested by the enforcement staff. Therefore, legal counsel's main role is to assist the coach with enforcement staff interviews and document production. Because the enforcement staff does not disclose interview topics prior to an interview, this assistance begins with identifying potential interview topics and exploring the coach’s knowledge of those topics. This preparation may involve legal counsel independently gathering information in a manner that does not expose the coach to allegations of interfering with the investigation. During an enforcement staff interview, legal counsel can seek clarification of confusing questions, prompt the coach to provide additional explanatory information, and protect the coach from unnecessarily repetitive or harassing questions.
In terms of document requests by the enforcement staff, legal counsel can analyze the reasonableness of the requests and help the coach respond accordingly. For example, if the enforcement staff requests a coach's phone or financial records, it may be appropriate to redact certain information or to allow only in camera inspection.

Similar to legal counsel for a school, a coach's legal counsel should maintain regular contact with the enforcement staff to shape the publication of a Notice of Allegations that accurately reflects the coach's conduct. For example, legal counsel can advocate that a violation is secondary rather than major, that a coach should not be personally named in an allegation even if a violation occurred regarding the coach's program, and that the occurrence of a violation does not warrant a "lack of coach control" allegation. If a coach is still employed at the school being investigated, legal counsel should also maintain regular contact with top school leaders and the school's legal counsel. Topics which legal counsel can discuss with school representatives include the coach's efforts to cooperate with the investigation, the school and coach's impressions of the investigative information related to the coach and his program, the impact of the investigation upon the coach's continuing employment, and the nature and scope of possible self-imposed sanctions upon the coach and his or her program.

**Committee on Infractions Hearing Phase**

The Committee on Infractions hearing phase of a major infractions case begins when enforcement staff publishes its Notice of Allegations and ends with the Committee's acceptance of a Summary Disposition report or the conclusion of the Committee hearing. Whether the case is resolved via Summary Disposition or a Committee on Infractions hearing, this period generally lasts approximately five months. In cases in which Summary Disposition is possible, the enforcement staff, the school, and any coach named in the Notice of Allegations produce an agreed-upon report for the Committee. This process typically involves the exchange of several drafts of the report, which is generally twenty to one-hundred pages long depending upon the circumstances of the case. If Summary Disposition is not viable, the school and any named coach have ninety days to respond in writing to the Notice of Allegations. Then, the enforcement staff has four to six weeks to draft a Case Summary, which is essentially the enforcement staff's response to the school and coach's responses. Upon receipt of the Case Summary, the school and coach have approximately a week to submit additional information to the Committee, all of which must be submitted at least ten days prior to the Committee hearing. Most Committee hearing are completed in a single day, although occasionally a hearing extends into a second day.

**Assistance for Schools**

The threshold issue that legal counsel can help a school analyze during the Committee hearing phase of a major infractions case is whether Summary Disposition is viable. This initially involves determining whether the case is so serious that the Committee will require a hearing. If that bridge is crossed, then legal counsel can help the school determine whether it is willing to stipulate to a description of violations to
which both the enforcement staff and any named coach will also agree. In order to help a school assess these issues, legal counsel can assist the school with the time consuming process of analyzing the full record of the case in light of NCAA bylaws, legislative interpretations, and prior Committee decisions. If Summary Disposition is possible, then legal counsel can lead the school's drafting and editing work regarding the Summary Disposition report.

When Summary Disposition is not possible, a school's obligation to submit a written response to each allegation in the Notice of Allegations necessitates the time-consuming process of analyzing the full record of the case, researching applicable NCAA bylaws and precedents, drafting an explanatory narrative regarding every alleged violation; and gathering and collating supporting exhibits. A school's engagement of legal counsel can substantially alleviate a school's logistical and resource burdens related to responding to the Notice of Allegations. Even before the actual drafting process begins, legal counsel can help the school develop a response strategy which includes deciding which, if any, allegations to dispute as well as what corrective and disciplinary measures to self-impose prior to the hearing, including employment action.

When the school receives the enforcement staff's Case Summary, legal counsel can help the school review the document for factual accuracy. In regard to allegations which the school's response disputed or provided mitigating information, legal counsel can help the school analyze the strengths and weaknesses of the enforcement staff's arguments set forth in the Case Summary. If the Case Summary contains factual inaccuracies or weakly supported arguments, legal counsel can help the school decide whether to address those concerns by submitting a supplemental response to the Committee. If a supplemental response is appropriate, legal counsel can help the school promptly draft the document within the brief period allowed for submitting additional information.

Prior to the Committee on Infractions hearing, legal counsel can prepare the school's representatives for the hearing experience. This preparation can include explaining the hearing process and reviewing the investigative record regarding each allegation for the people who will attend the hearing, helping the school's president draft opening and closing statements, and even staging a mock hearing for practice purposes.

At the hearing itself, legal counsel can serve as the primary presenter of the school's position regarding each allegation and the primary responder on behalf of the school to questions from the Committee. If specific issues can be best addressed by particular school representatives like the compliance director or the athletics director, legal counsel can coordinate the school's presentation to be sure that the Committee hears from the representative best suited to address each issue.

Assistance for Coaches

As with a school, the threshold issue that legal counsel can help a coach analyze during the Committee hearing phase is whether Summary Disposition is desirable. If the coach and the school under investigation still have a viable employment
relationship, it is often in the coach's best interest to adopt the school's position regarding Summary Disposition, even if the coach does not fully agree with the description of violations that the school is willing to accept. If Summary Disposition is pursued, legal counsel can draft the coach's portion of the Summary Disposition report to the extent anything beyond what the school submits is required.

When Summary Disposition is not possible, a coach is expected to submit a written response to each allegation in the Notice of Allegations that names the coach. Again, the nature of the coach's response may depend upon whether the coach is still employed by the school under investigation. If so, legal counsel can assist the coach by working with the school to craft responses that align as closely as possible. However, even in this circumstance, the process of analyzing the case file, conducting NCAA research, discussing information with the school's representatives, and drafting an explanatory narrative regarding each relevant allegation is extremely time-consuming and beyond the practical ability of most coaches to effectively accomplish without the assistance of legal counsel. If the coach is no longer employed by the school under investigation, it becomes even more important for a coach to engage legal counsel to help respond to the Notice of Allegations, because the coach's former school is likely to place as much blame as possible for any violation on the coach.

As with a school, when the enforcement staff's Case Summary is published, legal counsel can help a coach review the document for factual accuracy, analyze the strengths and weaknesses of the enforcement staff's assertions about the coach's conduct, decide whether the coach should submit a supplemental response to the Committee, and write the coach's supplemental response if needed.

Prior to the Committee on Infractions hearing, legal counsel can prepare a coach for the hearing by explaining the hearing process, reviewing the investigative record with the coach, helping the coach draft opening and closing statements, and vigorously questioning the coach during mock hearing practice sessions. At the hearing itself, legal counsel can advocate for the coach by presenting the coach's position regarding relevant allegations. Legal counsel can also help the coach provide on-point responses to Committee questions, and as necessary, help the coach keep his emotions in check.

**Post-Hearing Phase**

After the Committee on Infractions hearing, the Committee usually takes ten to twelve weeks to publish its finding. Under current NCAA procedures, schools and coaches receive only twenty-four hour notice that the finding will be released and do not actually learn the result of the Committee's deliberations until the day on which the finding is released. The Committee's finding includes a description of the violations that the Committee determined occurred, a classification of the violations as secondary or major, and a list of sanctions imposed upon the school and any coach found responsible for a violation. Upon the publication of the Committee's finding, a school or coach has only fifteen days in which to file notice of intent to appeal any part of the finding. The appealing party can agree to an appeal based upon written submissions.
only or can request an appeal hearing. In either case, once the Infractions Appeals Committee acknowledges receipt of the notice of intent to appeal, the appealing party has only one month to submit its appeal. Then, similar to the Committee on Infractions hearing process, the Committee has approximately one month to submit a document supporting its finding, and the appealing party has a brief final opportunity to submit additional information before the Infractions Appeals Committee hearing.

**Assistance for Schools**

When a school learns the results of the Committee's deliberations, the school has only a few hours to analyze the finding and determine whether and, if so, how to publicly respond when the finding is published. At this point, legal counsel can assist the school by analyzing the tone of the Committee's language and the severity of the sanctions imposed by the Committee and placing the Committee's conclusions in context compared to other Committee findings.

Given the short window for filing a notice of intent to appeal and then drafting the actual appeal document, legal counsel can help promptly research and analyze the school's chances for successfully appealing any portion of the Committee's finding. If the school seems inclined to pursue an appeal, legal counsel can begin reviewing the record of the Committee hearing and drafting the school's appellate argument even before the school files its notice of intent to appeal. As in the Committee on Infractions hearing phase, when the school receives the Committee's defense of its finding, legal counsel can help the school review the document for factual accuracy and analyze the strengths and weaknesses of the Committee's arguments. Then, legal counsel can help the school promptly submit its final appellate document to the Infractions Appeals Committee. If the appeal proceeds to a hearing, then legal counsel can prepare the school's representatives for the hearing and represent the school at the hearing.

If a school decides not to appeal a Committee on Infractions finding, or if relief from sanctions is not granted on appeal, NCAA bylaws obligate the school to comply with the Committee's sanctions and to periodically report the school's compliance to the Committee. Legal counsel can assist the school with both of these requirements by periodically auditing the school's compliance with the sanctions and drafting follow-up reports for submission to the Committee.

The conclusion of any appeal activity in the post-hearing phase of the infractions enforcement process essentially brings the process full-circle and once again provides an opportunity for legal counsel to help a school proactively reduce its future violation risks.

**Assistance for Coaches**

Like a school, a coach has only a few hours between learning the results of the Committee's deliberations and being confronted by the media about the Committee's finding. If the coach is employed at a NCAA school when the finding is published, the school can help the coach make an appropriate public statement. However, if the coach is not currently employed at a school, legal counsel can help the coach analyze
the Committee's finding and, if the coach desires, distribute a statement about the finding from the coach to the media.

Legal counsel can also help the coach make a timely decision about whether to appeal any portion of the Committee's finding. Pursuant to NCAA bylaws, a coach's pursuit of an appeal stays the implementation of any sanction appealed by the coach, so an unsuccessful appeal effectively extends the duration of the sanction by the length of time it takes to process the appeal. As such, thorough and objective analysis about the prospect for a successful appeal is particularly valuable to a coach who is out of work when the Committee's finding is published. If a coach decides to appeal the Committee's finding, legal counsel can assist the coach by researching and writing the appeal, preparing the coach for the appellate hearing, and advocating for the coach at the hearing in much the same manner as occurs in the Committee on Infractions hearing phase.

A coach who is sanctioned by the Committee on Infractions may face a number of employment related issues in which the assistance of legal counsel can be helpful. Primarily, a coach may face a situation in which a school attempts to utilize a Committee finding to justify reassigning the coach or terminating the coach's employment for cause. Furthermore, a coach who has been sanctioned by the Committee is almost certain to encounter unfavorable proposed terms regarding termination for cause during future employment negotiations. If a coach is fortunate enough to remain employed at a NCAA school during the period of the Committee's sanctions, legal counsel can help the coach by auditing and documenting the coach's compliance with the sanctions, which once again provides an opportunity for legal counsel to help the coach proactively reduce his future violation risks.

CONCLUSION

As with other legal matters, a school or coach's retention of legal counsel regarding the NCAA infractions enforcement process neither prevents the occurrence of a violation nor guarantees that an investigation into a potential violation will not result in significant negative consequences for the school or coach. However, there are many ways in which legal counsel can assist a school or coach regarding the infractions enforcement process, and the retention of quality legal counsel generally facilitates more efficient and less damaging outcomes for schools and coaches alike. Prudent school leaders and astute coaches recognize the value of assistance from legal counsel in NCAA compliance related matters, which is why fewer and fewer school or coaches attempt to represent themselves in regard to the infractions enforcement process.
The Intersection Between Litigation and NCAA Enforcement Procedures

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I. INTRODUCTION

While the National Collegiate Athletic Association (“NCAA”) investigation and enforcement process is not a “legal” process in the technical sense, attorneys frequently represent clients in NCAA matters. Indeed, student athletes, coaches, academic institutions, athletic conferences, and other personnel often retain attorneys to represent them in the course of an NCAA investigation. In many ways, the process shares similarities with the litigation process, making litigation attorneys uniquely qualified to handle NCAA matters. However, the NCAA process has many unique characteristics, and it is therefore incumbent upon the attorney to become familiar with NCAA rules and regulations, particularly as they relate to the NCAA investigation and enforcement procedures. This article is intended to serve as a resource for attorneys who are, or may become, engaged in representation of clients in NCAA matters, and to highlight several fundamental issues with respect to the NCAA investigation and enforcement process that litigation attorneys should be aware of.

As a threshold matter, it is important to understand the workings and purpose of the NCAA. The NCAA is the governing body of college athletics. Its primary purpose is to draw and maintain a clear line between intercollegiate, or “amateur,” athletics and professional sports. Among the NCAA’s tasks in maintaining this line are promulgating minimum academic standards for member institutions and prohibiting compensation of participating athletes. Article 2 of the NCAA constitution provides the “basic principles” that NCAA rules should advance, including: institutional control and responsibility; student-athlete well-being; ethical conduct;

sound academic standards; nondiscrimination and diversity; competitive equity; and a commitment to amateurism.²

Membership in the NCAA is on a voluntary basis; it is available to colleges, universities, athletics conferences and other groups related to intercollegiate athletics in the United States.³ Member institutions are divided among three divisions (I, II, and III), each creating its own governing rules (bylaws)—this article will only discuss the Division I bylaws. Acceptance of the constitution and bylaws is a prerequisite to membership.⁴ Because the NCAA is a private organization, it is in part a contract between the Association and its members. Professor Josephine Potuto elaborates on the NCAA’s contractual nature:

The NCAA is a multi-subject contract entered into by more than a thousand members (335 in Division I alone). NCAA members articulate the association’s purposes and decide how it will operate, who may join, the rules governing what members are required to do, and the rules describing what is prohibited. NCAA members must follow rules and policies collectively adopted; bylaws have direct impact only on them; and only members can change, repeal, or request waivers from them. An obligation of NCAA membership is that member institutions must monitor the conduct of those for whom they are responsible and sanction them for violations. In that way, staff members and student-athletes can be, and are, affected by NCAA bylaws.⁵

As the NCAA created its own bylaws, it also controls their interpretation and procedure for enforcement.⁶ This process often occurs practically insulated from judicial review. The NCAA is typically the final authority with respect to interpretation of the terms that govern member institutions. For example, in Bloom v. NCAA, the Colorado Court of Appeals gave great

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² Id. art. 2.
⁴ See NCAA Const., supra note 1, art. 3.1.1.
⁶ Id. at 271.
weight to the NCAA’s interpretation of its own bylaws in determining those bylaws’ meaning.\(^7\) Bloom is often cited as an example of NCAA enforcement violating procedural due process, with the NCAA acting as “prosecutor (the enforcement staff), judge (Committee on Infractions) . . . jury [and] appellate authority (the Council)” in the case.\(^8\)

Institutions, staff members, and student-athletes affected by the NCAA’s rules commonly turn to attorneys for advice. However, NCAA enforcement procedure differs significantly from procedure in traditional civil or criminal litigation.\(^9\) Because of these differences and the independence of the NCAA’s review, attorneys should be familiar with the NCAA’s procedural rules. Whether providing prospective advice on NCAA compliance or representing clients in the enforcement process, lawyers representing NCAA clients must gain an understanding of the enforcement process set out in the bylaws to be effective advocates. A good place to start is with a basic overview of the NCAA’s structure.

II. STRUCTURE OF THE NCAA

The NCAA is composed of several councils, committees, and other administrative units. The Executive Committee, occupied by 20 institutional presidents or chancellors, has authority across divisions. It controls budgetary and other Association-wide issues.\(^10\) Within Division I, the Board of Directors is the highest authority. The Leadership Council administers according to the Board’s directives, and the Legislative Council makes the bylaws. The Legislative Council has the “primary legislative authority, subject to review by the Board of Directors”—these two entities are also responsible for interpreting the bylaws.\(^11\)

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\(^7\) Id. at 282 (citing Bloom v. NCAA, 93 P.3d 621, 626 (Colo. Ct. App. 2004)).
\(^10\) See NCAA Const., supra note 1, art. 4 (Organization).
\(^11\) Id. at 4.6.2 and 5.4.
The Committee on Infractions (“COI”) is responsible for enforcement of NCAA bylaws.\(^{12}\) It acts as “judge and jury” at the hearing, while the enforcement staff conducts the investigation and presents the evidence.\(^{13}\) The COI consists of 10 members (see NCAA Bylaw 19.1.1 for information regarding composition of the committee). Its duties include revising the enforcement procedures, determining facts in cases, and imposing appropriate penalties.\(^{14}\) The five-member Infractions Appeals Committee may overturn COI decisions if it determines that “(1) the COI’s finding is clearly contrary to the evidence presented to the COI, (2) the facts found by the COI do not constitute a violation of the Association’s rules, or (3) a procedural error affects the reliability of the information that was used to support the COI’s finding.”\(^{15}\) The COI, enforcement staff, and Appeals Committee operate according to Bylaw articles 19 (Enforcement) and 32 (Enforcement Policies and Procedure).

III. ENFORCEMENT SUMMARY

Generally speaking, “[t]he enforcement staff holds member institutions accountable by seeking out and processing information about possible violations of NCAA rules, giving schools an opportunity to respond, and presenting facts to membership-led committees.”\(^{16}\) The enforcement process consists in investigations, charging, hearings, and penalties.

A. Investigation

The first step in the NCAA process is the investigation. The enforcement staff collects information from various sources, including member institutions, anonymous informants, and staff investigators. Upon finding a major violation (all violations other than “secondary”;

\(^{12}\) Id. at 19.1.
\(^{13}\) Fuller, supra note 3, at 501.
\(^{14}\) See NCAA Bylaws art. 19.1.3 (2011).
generally more serious infractions), a full investigation begins with interviews on and off campus. It is important for attorneys to note that the enforcement staff may begin these investigations without notifying the target institution. The enforcement staff will also begin collecting documentation and evidence. The average investigation takes less than 12 months.\(^\text{17}\)

B. Charging

If the investigation reveals enough evidence to proceed with the case, the enforcement staff sends a notice of allegations to the senior leadership of the member institution. The notice informs the institution of the rules it has allegedly violated and the manner in which the institution has done so. If the member institution and the enforcement staff agree on all facts, they may enter summary proceedings, jointly negotiating the penalties to be imposed. Otherwise, after the member institution responds to the notice (within 90 days), a hearing in front of the COI is set.\(^\text{18}\)

C. Hearings

If the case concerns a major violation, it will likely be heard by the COI. Members of this committee often have a legal background. The parties hold a pre-hearing conference to prepare evidence and details of the hearing. Each party and Committee member receives all documentation that will be used in the case two weeks before the hearing. High-ranking members of the institution, coaches, and players may be present. The institution’s legal counsel and compliance officers should also attend.

The enforcement staff sends three people to the hearing: the primary investigator for the case, the supervising director, and the vice president of enforcement. The hearing resembles court proceedings in some respects—for example, the COI acts as “judge,” all parties give


opening statements, all issues are discussed, evidence is presented, witnesses provide testimony, parties are given the opportunity to cross examine, and all parties make closing statements. The COI releases its report eight to twelve weeks after the hearing.19

D. Penalties

Penalties are assessed on a case-by-case basis. Precedent plays little role in the process. Penalties can be designed to address the specific infraction committed (e.g., restraints on future recruiting for recruiting violations). Public reprimand and censure are common. Final decisions are appealable to the Infractions Appeals Committee. If penalties are not given, cases may be downgraded to secondary violations or thrown out altogether.20

IV. ENFORCEMENT DETAILS: STRATEGY FOR “LITIGATING” AT THE COI HEARING

Although an NCAA infractions hearing may appear to be an adversary proceeding in certain respects, it is different in many ways from civil or criminal trials and typical administrative proceedings. A COI hearing may be characterized as a trial, an administrative proceeding, or a university misconduct hearing all at once. Although the proceedings have no legal force beyond that of the Association agreements, separate litigation between private parties may be threatened and ultimately result.21 Regardless, important differences in procedure and strategy exist in the NCAA enforcement realm. Litigators should consider these differences at the outset in order to serve their NCAA clients effectively.

The first thing an attorney preparing for enforcement hearings should note is that approach to case strategy will differ in many respects. Professor Gene Marsh and Marie Collins (both with extensive experience in NCAA compliance work) note some of the strategy mistakes

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an attorney may make. One is placing disproportionate weight on the member institution’s working relationship with the enforcement staff. Although the enforcement staff is most analogous to a prosecutor or a plaintiff, it is unlikely that any beneficial negotiations will come from working closely with the staff. As the authors put it, the COI is the “thousand pound gorilla”—it has the final say. Although cooperation with the enforcement staff is important, as it may affect penalty assessment, the enforcement staff has little effect on the final decision after it has presented its evidence. In short, it is necessary to know the different functions that the COI, enforcement staff, and the Appeals Committee may serve.  

Another mistake attorneys often make is using repetitive opening and closing statements “designed to educate the jury.” Attorney often use this tactic to develop a theme for the case. While this may work in civil or criminal trials, it is unlikely that it will advance a client’s argument in front of the COI. The COI members preside at these hearings several times a year, and are usually experts on NCAA enforcement. Recognizing that the COI is not an ordinary jury is important—it will probably value a succinct version of the facts and arguments far more than emotional arguments and repetitive themes.

Marsh and Collins’ final advice is reflected in two principles found in the NCAA Bylaws on enforcement: “institutional control” and the “cooperative principle.” Article 6 of the NCAA constitution sets forth the principle of institutional control. Member institutions, through their administration and faculty, are responsible for the conduct of their athletics programs. This entails self-study and maintaining rules compliance programs. An institution must monitor its athletic programs and report any wrongdoing to the NCAA. The cooperative principle “imposes an affirmative obligation on each institution to assist the enforcement staff” in the

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22 Id. at 677–78.
23 See id. at 679.
24 See NCAA Const. art. 6; see also NCAA Bylaws art. 22.2.
investigation process. Failure to cooperate could result in further sanctions for individuals and institutions. According to the authors, because of the responsibilities the NCAA imposes on member institutions, advice on compliance should be “more akin to a . . . long-standing advisory relationship, outside the context of episodic litigation.” This view perceives the advisory process as an overall preservation of the institution’s integrity and standing with the NCAA rather than a one-time dispute over an infraction of the rules.

V. ENFORCEMENT DETAILS: THE NCAA BYLAWS

In addition to strategic considerations in representing clients in NCAA enforcement scenarios, there are also technical differences in the bylaws that should be highlighted. One of these is the cooperative principle discussed above. This principle imposes an “affirmative duty to cooperate and disclose any information.” Accordingly, those being interviewed throughout the NCAA enforcement process have no right to remain silent. Instead, they have an obligation to assist in determining (1) whether a violation occurred and (2) the details of that violation. In advising clients, attorneys should consider the potential sanctions for withholding pertinent information from the enforcement staff and the COI. It is also important to note the NCAA policy of encouraging self-enforcement, which is a mitigating factor in determining penalties for violations. Limited immunity is also available for cooperation in some circumstances.

Although individuals may not have a right to remain silent, they do have a right to the presence of legal counsel when an interview may “develop information detrimental to the interests of the individual[.]” Student-athletes or staff members may also request the presence of

25 NCAA Bylaws art. 32.1.4.
26 Investigations, supra note 17.
27 Marsh & Robbins, supra note 21, at 704.
28 Fuller, supra note 3, at 502.
29 Id.
30 See NCAA Bylaws art. 32.1.4.
31 NCAA Bylaws art. 32.2.2.
32 See NCAA Bylaws art. 32.3.8.
an “institutional representative” when the interview relates directly to the institution or the individual’s employment there. In these situations, the enforcement staff must disclose the purpose of the interview and advise the interviewee that failure to cooperate could result in a violation of NCAA ethical conduct legislation. 33 Interviews may be recorded. However, if the interviewee objects to recording, the enforcement staff must prepare a written summary. 34 The interviewee has the right to revise and make additions to the interview transcript; he or she may also request that a court reporter transcribe the interview. The individual or institutional representative interviewed must agree to keep transcripts of the interview confidential. 35

Evidentiary rules are virtually absent from the NCAA enforcement procedure. NCAA does not have subpoena or contempt power, and there is no access to court-ordered discovery. 36 The result is exclusive reliance on the cooperative principle, which often becomes nothing but an honor system. Individuals and institutional representatives have an obligation to come forward with information on potential infractions. However, without the force of court-ordered discovery, there is no practical way to flush this information out. Likewise, where subpoenas help build a case on the “front end,” the cooperative principle is enforced through penalties after a COI hearing is decided. In sum, making a case solely on the cooperative principle is “fraught with limitations.” 37

There are other procedural aspects of NCAA enforcement that are similar to civil litigation. The Bylaws enumerate what is essentially a notice pleading regime in article 32.6.2. The enforcement staff must notify all involved individuals (within six months); failure to respond (within 90 days) to the COI is treated as an admission of the alleged infraction. Article

33 See generally NCAA Bylaws art. 32.3 (Investigative Procedures).
34 NCAA Bylaws art. 32.3.9.
35 NCAA Bylaws art. 32.3.9.1.4.
36 Potuto, supra note 5, at 290.
37 Id. at 291, 293.
32.6.3 outlines the four-year statute of limitations for allegations, with a few exceptions (violations affecting student-athlete eligibility, cases involving a “pattern of willful violations,” and those involving a blatant disregard for the NCAA’s fundamental principles).

The COI may exercise broad discretion in imposing penalties. Penalties are generally assessed on a sliding scale, in consideration of the severity and nature of the infraction.\textsuperscript{38} The available penalties for major and secondary violations are listed in article 19.5. Finally, member institutions and their representatives have the right to appeal the COI’s findings on secondary violations (within 30 days) and major violations.\textsuperscript{39} In 2008, the Division I Appeals Committee adopted an “abuse-of-discretion” standard of review for appeals.\textsuperscript{40} This could increase the chances of success in appealing infractions decisions, which historically have had a very low likelihood of success when reaching the Appeals Committee (appeals were previously reviewed under an “excessive-or-inappropriate” standard).\textsuperscript{41} The procedures for bringing an appeal can be found in article 32.10 of the NCAA Bylaws.

While attorneys who experience their first NCAA case may be overwhelmed by the many colorful nuances of the NCAA process, it is important for such attorneys to recognize that their skill set is well suited to the NCAA process. To the extent that there are appreciable differences between the NCAA process and litigation, it is merely a matter of become intimately acquainted with the NCAA rules and regulations and accepting the lack of rules and procedures (e.g., discovery mechanisms, etc.) that exist in the litigation context.

\textsuperscript{38} NCAA Bylaws art. 19.01.5 (Nature of Penalty Structure).
\textsuperscript{39} See generally NCAA Bylaws art. 19.6 (Rights of Member to Appeal).
\textsuperscript{40} Wong, supra note 15, at 57.
\textsuperscript{41} See id. at 153-54.
ENFORCEMENT DEPARTMENT STRUCTURE

There are four areas that make up the NCAA enforcement department: (1) development, (2) investigations, (3) processing, and (4) information management.

1) Development (Knowledge, Contacts, and Leads)
   a) Primary areas of emphasis in football, men's basketball, gambling, and agents.
   b) Secondary areas of emphasis in women's basketball, track and field, baseball, and men's ice hockey.

2) Investigations (Model Investigative Agency)
   a) All staff, no matter what area, are trained investigators.
   b) The staff investigates 75 to 100 potential major cases at any given time. An additional 25 cases are in the monitoring phase.

3) Processing (Efficiency and Quality Control)
   a) Major violations.
   b) Secondary violations.
      i) A violation is secondary if it is:
         1) Isolated or inadvertent;
         2) Provides/intended to provide only a minimum recruiting, competitive or other advantage; and
         3) Did not include any significant impermissible benefit.
   c) Basketball event certification.
   d) Officials background checks.

4) Information Management Group (Quality Control, Technology, and Information)
   a) An information hub that focuses on technology, information management, research/monitoring for development, investigative support (e.g. records review), processing support (e.g. precedent research), and general case support.
STAGES OF A MAJOR INVESTIGATION

There are four stages of a major infractions case: (1) investigation, (2) charging, (3) Committee on Infractions (COI) hearing, and (4) COI deliberations.

STAGE 1
THE INVESTIGATION

1) Sources of Information

a) Enforcement receives information from a variety of sources including:
   i) Violation calls.
   ii) Emails, faxes, regular mail.
   iii) Contacts in the collegiate and professional sports worlds (e.g., media, agents, coaches, parents and players).
   iv) Monitoring of blogs, message boards, Twitter, Facebook and media reports.
   v) Self-reports from institution.

b) Often investigators receive information from confidential sources.
   i) This information is considered off the record.
   ii) Off the record information cannot be:
       (1) Used as evidence to support an allegation; or
       (2) Presented to the COI.

c) An investigation is not initiated every time the enforcement staff receives information.
   i) Information is evaluated to determine if further investigation is warranted. Factors include:
       (1) Detail provided;
       (2) Ulterior motives; and
       (3) Direct/indirect knowledge.

2) Investigative Strategy

a) At the beginning of every case, an investigator will create an investigative roadmap that includes:
   i) List of potential interviewees;
   ii) Order/sequence of those interviews;
   iii) List of documents needed; and
   iv) Method/timing of requesting those documents.

b) This is no right strategy per se, but a wrong decision can completely stop an investigation by preventing the enforcement staff from developing full and complete information.

c) Potential Interviewees
   i) Enforcement will cast a wide net in developing the list.
   ii) It will include anyone who may have knowledge that could help develop full information.

d) Sequence of Interviews
   i) Enforcement has a duty to protect the integrity of the investigation so investigators must anticipate and react to potential threats to obtaining untainted information.
   ii) The investigator will always ask, “Who will this person call or talk to after I interview him/her?”

e) Document Requests
i) Circumstances dictate when to request documents so it could occur at any point before, during, or after interviews.
ii) The timing of the request must not compromise the integrity of the investigation.
iii) The enforcement staff routinely requests documents from coaches, parents, student-athletes and third parties.
iv) The enforcement staff does not have subpoena power to compel cooperation. Only individuals under NCAA jurisdiction (e.g. student-athletes, coaches, institutional personnel) are obligated to comply.

3) **The Enforcement Interview**

   a) Scheduling of Interviews
      i) “On campus” interviews include involve current staff members or student-athletes and are prescheduled due to advance notice requirements.
      ii) “Off campus” interviews involve anyone else who may have information.

   b) On campus interview procedural requirements include:
      i) Recording the interview;
      ii) Allowing an institutional representative to be present in interviews in which the institution or individual is considered at risk; and
      iii) Reviewing a copy of the NCAA Interview Notice form, which notifies the interviewee:
          (1) That the purpose of the interview is to determine knowledge of or involvement in NCAA violations;
          (2) The opportunity to have personal legal counsel present; and
          (3) Ethical conduct ramifications for providing false or misleading information.

   c) Off campus interview strategies include:
      i) Cold Calls
         (1) Unannounced or unscheduled encounter with an interviewee.
         (2) Typically at the interviewee's residence or place of employment.
      ii) Simultaneous Interviews
         (1) Two or more interviewees are interviewed in different locations at the same time.
         (2) Minimizes or avoids the opportunity for collusion between interviewees.
      iii) Surge
         (1) Sending a team of investigators to different areas to conduct interviews about the same issue.
         (2) Typically is utilized when an issue is about to break in the media.

4) **Other Investigation Issues:**

   a) Student-Athlete Reinstatement (SAR)
      i) Once a school is aware that a violation impacting eligibility has occurred, the institution – not the NCAA or the enforcement staff – must declare the student-athlete ineligible and seek reinstatement.
      ii) The SAR process is distinct from the enforcement process, and is handled by a separate department at the NCAA.
      iii) The SAR process will typically conclude before the enforcement investigation.
      iv) Remember:
          (1) SAR deals with student-athlete culpability.
          (2) Enforcement deals with institutional culpability.

   b) Notice of Inquiry (NOI)
      i) A verbal or written notice provided by the enforcement staff to the president/chancellor of an institution that identifies the sport program(s) and general nature of alleged violation(s) under investigation.
      ii) The NOI must be issued prior to the first on-campus interviews.
STAGE 2
THE CHARGING PROCESS

1) **Charging Standard:**
   
a) NCAA bylaws require the enforcement staff to bring an allegation when it believes there is sufficient information to conclude the COI *could* make a finding.

b) The enforcement staff goes through a deliberative process that includes:
   
i) Review of case precedent;
   
ii) Discussions with the involved investigative team from the involved institution; and
   
iii) Collaboration between primary investigator, his/her director, the vice president of enforcement, and others within the department.

c) When evaluating if there is sufficient evidence to conclude the COI could make a finding, the enforcement staff must:
   
i) Only use on the record information and documentation;
   
ii) Evaluate evidence fairly and objectively; and
   
iii) Weigh the credibility of each interviewee taking into account ulterior motives.

2) **The Charging Document**
   
a) The Notice of Allegations (NOA) is the charging document.
   
i) It must be written with enough specificity to allow institutions/involved individuals to understand and respond to allegations.

b) The NOA is provided to the president of the institution; other designated representatives (e.g. outside counsel); “involved individuals” (e.g. those individuals named as being significantly involved in the alleged violations); and the COI.

c) Once the NOA is sent, there are several time periods required by NCAA bylaws for processing of the case. These include:
   
i) Within 30 days after the NOA is sent – a secure online website is made available to institution
   
ii) Within 90 days after the NOA is sent – the institution and/or involved individuals respond in writing
   
iii) Within 30 days after receipt of the response(s) – the enforcement staff, institution, and any involved individuals hold prehearing conferences to narrow allegations at issue
   
iv) Within 14 days of the COI hearing – the enforcement staff provides a case summary to the COI

STAGE 3
THE NCAA COMMITTEE ON INFRACTIONS HEARING

1) **Individuals Present at a COI Hearing**
   
a) COI (DI – 8 members; DII – 7 members; DIII – 5 members)
   
i) The COI is comprised of representatives from member institutions (e.g. athletic directors, conference commissioners) and the public (e.g. attorneys, judges).
   
ii) They are volunteers and not employed by the NCAA national office.

b) Enforcement staff
   
i) Approximately 12 individuals, including the vice president, all directors of enforcement and the primary investigator
c) Institution
   i) Approximately 10-15 individuals
   ii) COI requires the appearance of certain individuals, including the president, athletic director and faculty athletics representative.

d) Involved individuals
   i) Coaches or any other individuals who have been identified in the allegations and requested to respond. Typically, they also have counsel present.

2) Basic Structure of a Committee on Infractions Hearing
   a) Opening statement by Chair of the Committee on Infractions.
   b) Opening statements by the parties.
   c) Presentation of each allegation by the enforcement staff.
   d) Response by parties to each allegation.
   e) Questions by members of the Committee on Infractions.
   f) Closing statements by the parties.
   g) Closing instructions by the Chair of the Committee on Infractions.

3) How Evidence is Presented to the Committee on Infractions
   a) Questions posed by the committee members during the hearing to the enforcement staff, institution, and involved individuals;
   b) Documents provided in advance of the hearing; and
   c) Documents and information requested by the Committee on Infractions during the hearing.

4) Important Notes about COI Hearings
   a) They are not legal proceedings.
   b) Only those listed above are present. There are no “witnesses” per se.
   c) All parties are expected to answer questions posed by the COI. There is no right against self-incrimination.

STAGE 4
COMMITTEE ON INFRACTIONS DELIBERATIONS

1) Deliberation Logistics
   a) Only the COI and its support staff are in the room for deliberations.
      i) The enforcement staff, institution and involved individuals are not present.
   b) The COI deliberates on findings of violations first.
      i) NCAA bylaws state that the COI shall base it findings on “information that it determines to be credible, persuasive, and of a kind on which reasonably prudent persons rely in the conduct of serious affairs.”
   c) Once all findings made, the COI determines appropriate penalties for all violations found.
      i) The COI determines penalties in the aggregate and not for each violation.

2) NCAA Penalty Philosophy
   a) Penalties should:
      i) Be punitive to be effective;
      ii) Provide a measure of deterrence for future violations;
      iii) Remedy competitive advantage gained;
iv) Recognize difficulty of monitoring;
 v) Underscore efforts to maintain institutional control; and
 vi) Reflect the magnitude of the case.

b) When determining penalties, the COI will consider:
   i) Nature of the violations;
   ii) Level of violations involved;
   iii) Frequency or extent of the violations;
   iv) Number and positions of staff members involved;
   v) Whether the violations were intentional;
   vi) Whether the facts aggravate or mitigate the circumstances;
   vii) Whether any competitive advantage was gained;
   viii) Whether the violations involve a failure to monitor or lack of institutional control;
   ix) Whether the institution has taken sufficient corrective and punitive actions;
      1) Corrective actions – steps taken to prevent future violations (e.g. rules education)
      2) Punitive actions – punitive actions the institution is requesting the COI approve as a part of the
         overall penalties (e.g. post season ban)
   x) Level of institutional cooperation during the investigation; and
   xi) Case precedent.

3) Other Deliberation Issues

   a) Show Cause Order
      i) Any penalties assessed against individuals are issued via a "show cause order."
      ii) A show cause order can restrict an athletic department staff member's athletically related duties
          including:
             1) Specific coaching activities.
             2) On or off-campus recruiting activities.
             3) Other restrictions.

   b) Institutional Responsibility
      i) Under NCAA rules, institutions are responsible for the actions of staff members, student-athletes, and
         boosters regardless of knowledge or involvement.

c) Institutional Control
   i) There are four basic elements to maintaining institutional control:
      1) Adequate compliance measures and policies;
      2) Education on NCAA rules for staff, boosters, and student-athletes;
      3) Monitoring to assure that NCAA rules and policies are understood and followed; and
      4) Swift, effective action once evidence of a potential violation is uncovered.
Demystifying the NCAA Investigation & Enforcement Process

Outline

By: Richard J. Evrard

--The beginning of an NCAA investigation.

--The NCAA enforcement staff -- A brief history and current status.

--Who is obligated to cooperate with an NCAA investigation and why.

--The timing and order of an NCAA investigation.

--Who is considered “at risk” under the NCAA’s infractions process.

--The NCAA Committee on Infractions and NCAA Infractions Appeals Committee.

--The aftermath of an NCAA infractions case.
Brynna Barnhart
Assistant Director of Enforcement

Brynna Barnhart has worked as a member of the enforcement staff at the NCAA national office in Indianapolis, Indiana for four years. In her role as an assistant director of enforcement, Barnhart ensures integrity and fair play by investigating Divisions I, II and III athletics programs that are in violation of NCAA legislation. In August 2011, Barnhart became a member of the enforcement staff’s Football Development Group, which focuses on developing knowledge, contacts and investigative leads in Division I football. Barnhart also serves as a secondary liaison to the NCAA Committee on Women’s Athletics and as chairperson of The Enforcement Experience, the enforcement staff’s educational session that takes participants through a mock investigation and Committee on Infractions hearing.

Before joining the national office staff, Barnhart practiced law at a law firm in the St. Louis, Missouri area. She focused her practice on insurance defense litigation, representing one of the largest electric companies in Illinois and Missouri.

Barnhart earned her Juris Doctorate from Southern Illinois University, Carbondale. She earned her Bachelor’s Degree at Knox College (Galesburg, Illinois), where she was a member of the women's basketball team and softball team.
Areas of Concentration

Joe provides transactional and regulatory advice to municipalities and highly-regulated businesses. He specializes in providing municipal economic development, gaming and legislative affairs assistance to those entities. Joe has negotiated contracts, development agreements, transactions, acquisitions and economic development projects worth billions of dollars. Additionally, he is instrumental in Bingham EST - the firm's own entertainment and sports agency. In that role, he works with athletes, coaches and entertainers on contractual matters, sponsorship opportunities and overall brand management.

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- B.S., Public Affairs, Indiana University, 1988
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Courts Admitted to Practice

- U.S. District Court, Southern District of Indiana, 1992
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Professional Memberships and Affiliations

- Indiana State Bar Association
- American Inn of Courts, past member

Civic and Charitable Involvement

- Holy Spirit at Geist, volunteer coach
- Catholic Youth Organization, volunteer baseball coach
- Sports Radio Talk Show ESPN-950am, co-host
- National Football Leauge, Past Certified Agent
- National Basketball Association Player’s Association, Past Certified Agent
- Indiana Beta Education Foundation, Sigma Phi Epsilon Fraternity, Past President
- Actively involved in political campaigns from President of the United States to the local level

Presentations
Bingham Greenebaum Doll Indiana Legislative Conference, Gaming, 2005-present

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- Special Counsel to Indiana Speaker of the House, 2000-2002
- State of Indiana Deputy Attorney General, 1997-2000
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Professional Experience  
Stuart Brown’s combined coaching and legal background enables him to provide sophisticated athletics related counsel to college and university athletics departments, senior institutional administrators, coaches, student-athletes, and other institutional stakeholders and business partners.  

Brown began his involvement in college athletics as an undergraduate assistant on Bob Staak’s Wake Forest men’s basketball staff -- a staff that produced four future Division One head coaches. After graduating magna cum laude from Wake, Brown was a dean’s list law student at Vanderbilt, where he continued his coaching development through coach Eddie Fogler’s championship level program. Upon graduating from Vanderbilt, Brown coached junior college and NCAA Division One men’s basketball for seven seasons. He participated in multiple NCAA Tournaments and helped recruit or develop more than a dozen NBA players. While an assistant coach at Georgia Southern University, Brown taught business law in the university’s business school.  

Brown began his legal practice in 1999. His practice primarily involves counseling collegiate athletics stakeholders regarding NCAA rules compliance and infractions issues, employment and endorsement contracts, coach-school disputes, student-athlete eligibility issues, and sports-business matters. Brown has regularly appeared before the NCAA Committee on Infractions on behalf of clients and has also represented clients in NJCAA and athletics related law enforcement investigations.  

Brown is a member of the Georgia and Illinois State Bar Associations. He is admitted to practice law in state and federal courts.  

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