

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

May 26, 2011

Report No. 323

University of Southern California

Los Angeles, California

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

I.	INTRODUCTION.	1
II.	BACKGROUND.	1
III.	VIOLATIONS OF NCAA LEGISLATION AS DETERMINED BY THE COMMITTEE ON INFRACTIONS.....	1
IV.	PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS.	8
V.	ISSUES RAISED ON APPEAL.....	16
VI.	APPELLATE PROCEDURE.	16
VII.	INFRACTIONS APPEALS COMMITTEE’S RESOLUTION OF THE ISSUES RAISED ON APPEAL.	16
VIII.	CONCLUSION.....	22

I. INTRODUCTION.

The University of Southern California 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 University of Southern California (hereinafter referred to as Southern California).

II. BACKGROUND.

The Committee on Infractions issued Infractions Report No. 323 June 10 2010, in which the committee found violations of NCAA legislation in the football, men's basketball and women's tennis programs. On the basis of those findings, the Committee on Infractions determined that this was a major infractions case and imposed penalties accordingly. [June 10, 2010, issue of The NCAA News.]

This case centered on violations of NCAA bylaws governing amateurism; coaching staff limitations; recruiting contacts by representatives of institution's athletics interest; offers and inducements; extra benefits; and lack of institutional control.

After the Committee on Infractions issued its report, Southern California filed a timely notice of appeal June 25, 2010. A written appeal was filed August 10, 2010. A supplemental written appeal was filed November 4, 2010. The Committee on Infractions filed its response November 19, 2010. Southern California filed its rebuttal to the Committee on Infractions response December 8, 2010. The case was considered by the Infractions Appeals Committee January 22, 2011 (see Section VI below).

III. VIOLATIONS OF NCAA LEGISLATION AS DETERMINED BY THE COMMITTEE ON INFRACTIONS. [Please note that the cites below are the cites as they appear in the Committee on Infractions report dated June 10, 2010.]

B-1. UNETHICAL CONDUCT; VIOLATIONS OF AMATEURISM LEGISLATION; FAILURE TO REPORT KNOWLEDGE OF NCAA VIOLATIONS. [NCAA Bylaws 10.1-(d), 12.01.1, 12.1.1, 12.1.2-(a), 12.3.1, 12.3.1.2 and 30.3.5 (2009-10 NCAA Division I Manual)]

Beginning in October 2004 and continuing until November 2005, two individuals (for the purposes of this report, "agency partners A and B" respectively), were in the process of forming a sports agency and marketing company, in partnership with student-athlete 1 and his step-father and mother ("the parents"). In the course of this relationship, agency partners A and B gave student-athlete 1 and his parents impermissible benefits in the form of cash, merchandise, an automobile, housing, hotel lodging and transportation. As

a result of the receipt of these benefits, student-athlete 1 competed for the football team while ineligible. This ineligibility began at least by December 2004 and encompasses the 2005 Orange Bowl game and the entire 2005 football season, including postseason competition. Further, the assistant football coach knew or should have known that student-athlete 1 and agency partners A and B were engaged in violations that negatively affected student-athlete 1's amateurism status. The assistant football coach provided false and misleading information to the enforcement staff concerning his knowledge of agency partner A's and B's activity and also violated NCAA legislation by signing a document certifying that he had no knowledge of NCAA violations.

- a. Concerning the partnerships and impermissible benefits, the committee finds that the following occurred:
 - (1) In the fall of 2004, while student-athlete 1 was competing for the institution, student-athlete 1's step-father and agency partner A discussed the formation of a sports agency and marketing company featuring student-athlete 1. Subsequently, student-athlete 1 entered into an agreement with sports agency partners A and B to establish a sports agency to negotiate future marketing and professional sports contracts. [Note: The agreement may be inferred from student-athlete 1's subsequent conduct and his request for and acceptance of benefits.]
 - (2) Shortly after the agreement was reached to form a sports agency, student-athlete 1 and his family began asking for financial and other assistance from agency partners A and B. Thus, began a pattern of impermissible benefits provided by agency partners A and B to student-athlete 1 and his family.
 - (3) In January 2005, at the request of the parents, agency partner A instructed his former brother-in-law ("the former brother-in-law") to arrange round-trip airline transportation between San Diego and Ft. Lauderdale, Florida, a value of approximately \$1,200, for the parents and for the brother of student-athlete 1 to attend the Orange Bowl.
 - (4) During a telephone conversation in late 2004, student-athlete 1 informed agency partner A that he (student-athlete 1) was embarrassed to drive his current vehicle, a pick-up truck, and wanted a different vehicle. Agency partner A agreed to provide the cash to purchase a vehicle. A short while later, in December 2004, student-athlete 1 located a vehicle he wanted,

and agency partner A gave student-athlete 1's stepfather several thousand dollars in cash for a down payment on the vehicle. Student-athlete 1 later contacted agency partner A to request additional money needed to purchase wheel rims for the vehicle. Agency partner A then drove from San Diego to Los Angeles and gave student-athlete 1 an additional several thousand dollars in cash. Approximately one week later, agency partner A gave student-athlete 1 another sizable cash payment, which the student-athlete used for a car alarm and audio system.

- (5) In early March 2005, after a request from student-athlete 1 to attend a former NFL player's ("former NFL player") birthday party in San Diego, agency partner A contacted agency partner B to arrange for student-athlete 1 to use a room in a hotel near the venue where the birthday party was held.
- (6) On the night of March 5, 2005, agency partner A provided cost-free round-trip limousine service for student-athlete 1 to travel from the hotel to the San Diego nightclub where the birthday party was held.
- (7) In March 2005, after a request from student-athlete 1 to vacation in Las Vegas, agency partner A contacted agency partner B, who arranged for two night's lodging (March 11-12) and incidentals for student-athlete 1 at a Las Vegas Resort a value of \$564.
- (8) In March 2005 and after his parents were asked by their landlord to vacate their residence, student-athlete 1's parents and agency partners A and B agreed that agency partner B would purchase a property located in Spring Valley for the parents. The written agreement called for the parents to pay agency partner B \$1,400 per month (of the approximately \$4,500 monthly cost) plus utilities until such time when student-athlete 1 would pay the difference to agency partners A and B with money from the income he would earn once he became a professional athlete. However, the parents resided at the property at no cost until April 2006.
- (9) In the spring of 2005, agency partner B provided the parents with approximately \$10,000 in cash to purchase furniture for the Spring Valley residence.

- (10) In April 2005, the mother of agency partner A ("agency partner A's mother") purchased a washer and dryer for the parents at the San Diego Naval Exchange.
- (11) In June 2005, while agency partner A was incarcerated, student-athlete 1 made telephone contact with agency partner A's then girlfriend ("agency partner A's former girlfriend") and requested cash. The former girlfriend subsequently deposited at least \$500 in cash of agency partner A's funds into student-athlete 1's account at a Washington Mutual bank branch located on Jamacha Road in El Cajon.
- (12) Prior to the institution's September 3, 2005, football contest at the University of Hawaii, Manoa (Hawaii) student-athlete 1's step-father went to agency partner A's mother's home in El Cajon where she provided \$5,000 in cash to him.

**B-2. AMATEURISM VIOLATIONS, IMPERMISSIBLE EXTRA BENEFITS.
[NCAA Bylaws 12.3.1.2, 16.02.3 and 16.11.2.1]**

On a number of occasions from November 2005 to January 2006, in an effort to obtain representation in future professional marketing negotiations from student-athlete 1, a sports marketing agent ("sports marketer A"), and his associate ("sports marketer B") and their agency, all of whom are representatives of the institution's athletics interests, provided impermissible benefits to student-athlete 1, some of his friends and members of his family.

- a. Concerning the sports marketing agency (sports marketers A and B) being representatives of the institution's athletics interests, in April 2005, sports marketer B contacted USC's associate director of athletics ("the associate director of athletics") to determine if any of the institution's student-athletes would be interested in a summer internship with the sports marketing agency. The associate director of athletics asked the former director of compliance ("former director of compliance") if it was permissible for a student-athlete to intern for a sports marketing group. After the former director of compliance's April 26 approval, two of the institution's football student-athletes were hired by the sports marketing agency. Shortly thereafter, sports marketer B informed the associate director of athletics that the sports marketing agency had also hired student-athlete 1.

- b. Concerning the impermissible benefits provided to student-athlete 1, his family and friends by sports marketers A and B through their sports marketing agency:
- (1) During the weekend of November 11-13, 2005, the sports marketing agency provided the family of student-athlete 1 round-trip airline transportation on Southwest Airlines between San Diego and Oakland, a value of \$595.20, and round-trip limousine service between the Oakland airport and a San Francisco hotel, a value of \$250, to attend the institution's away football game at the University of California, Berkeley.
 - (2) On or about November 28, 2005, the sports marketing agency purchased a round-trip airline ticket for a friend of student-athlete 1 ("friend A") on Continental Airlines between Las Vegas and Newark, New Jersey, a value of \$405.05.
 - (3) On or about November 28, 2005, the sports marketing agency purchased a round-trip airline ticket for another friend of student-athlete 1 ("friend B") on American Airlines between Los Angeles and New York City, New York, a value of \$368.50.
 - (4) On or about November 30, 2005, the sports marketing agency paid \$150 in airline service fees owed by members of student-athlete 1's family.
 - (5) In late December 2005, sports marketer A reserved and used his credit card to hold a room for the aunt of student-athlete 1 at a San Francisco hotel.
 - (6) In December 2005, sports marketer A paid an undetermined amount to repair student-athlete 1's 1996 Chevrolet Impala automobile, which was damaged in an accident.

B-3. VIOLATION OF COACHING STAFF LIMITATIONS. [NCAA Bylaws 11.7.1.1.1, 11.7.2 and 11.7.4]

During the period August 8 to December 11, 2008, the institution's intercollegiate football program exceeded the maximum number of countable coaches. Specifically, in August 2008, the former head football coach hired a consultant ("the consultant") for the entire 2008 regular playing season.

During this period, the consultant engaged in activities that triggered NCAA Bylaw 11.7.1.1.1 when the consultant attended practice sessions, analyzed video footage of the institution's contests, and discussed with the former head football coach his observations and analyses of the institution's special teams.

B-4. IMPERMISSIBLE RECRUITING CONTACTS BY A BOOSTER. [NCAA Bylaws 13.01.2, 13.01.4 and 13.6.7.1]

On several occasions beginning in December 2002 and continuing to December 2005, during prospective football student-athletes' official paid visits to the institution's campus, a representative of the institution's athletics interests and the owner of a local restaurant ("representative A") made impermissible off-campus recruiting contacts with a number of prospective student-athletes.

B-5. IMPERMISSIBLE INDUCEMENTS AND EXTRA BENEFITS. [NCAA Bylaws 12.3.1.2, 13.01.3, 13.01.4, 13.2.1, 13.2.1-(b), 13.2.1-(e), 16.01.1, 16.02.3 and 16.11.1.1]

From August 2006 through May 2008, representative B who was also affiliated with a professional sports agency, and representative B's associate ("representative C"), provided inducements and extra benefits in the form of cash, lodging, merchandise, automobile transportation, meals, airline transportation and services to student-athlete 2 when the young man was both a prospect and an enrolled student-athlete, to his brother ("brother"), to his girlfriend, ("girlfriend") and to the girlfriend's mother ("girlfriend's mother"). The two representatives provided the following inducements and extra benefits:

- Transportation, meals, lodging, professional training sessions, cash and merchandise to student-athlete 2 and his brother in August 2006, while the young men were in the Los Angeles area;
- \$150 cash, wired to the girlfriend on December 31, 2006;
- \$300 cash, wired to the girlfriend on February 19, 2007;
- \$150 cash, wired to the girlfriend on August 31, 2007;
- A wireless communication service device worth \$226.24 to student-athlete 2 on March 13, 2007;

- Monthly wireless service at \$171 per month, with a total value of \$2,297, to student-athlete 2 from March 13, 2007 through April 2008;
- Arrangement for student-athlete 2 to appear on the cover of the November 2007 issue of SLAM magazine and be featured in a story in the same issue;
- Transportation to Las Vegas, and two nights' lodging in that city, to student-athlete 2 on or about July 20, 2007;
- An airline ticket to student-athlete 2's brother on or about August 2, 2007, so that the young man could travel to the Los Angeles area from Ohio;
- Transportation and arrangements for a meal for student-athlete 2 and his brother on or about August 2, 2007;
- Monthly wireless service to student-athlete 2's brother from August 2007 through April 2008 at approximately \$173 per month, a total benefit of \$1,557;
- A television valued at \$1,399 to student-athlete 2 on August 21, 2007.

B-6. EXTRA BENEFITS – IMPERMISSIBLE TELEPHONE CALLS. [NCAA Bylaws 16.11.2.1 and 16.11.2.2]

From November 2006 to March 2009, a former women's tennis student-athlete ("former women's tennis student-athlete") used an athletics department long-distance access code to make 123 unauthorized personal telephone calls to family members in another country. The total value of the calls was \$7,535.

B-7. LACK OF INSTITUTIONAL CONTROL. [NCAA Constitution 2.1.1, 2.1.2, 2.8.1 and 6.01.1]

From December 2004 through March 2009, the institution exhibited a lack of control over its department of athletics by its failure to have in place procedures to effectively monitor the violations of NCAA amateurism, recruiting and extra benefit legislation in the sports of football, men's basketball and women's tennis. As a result, three different agents and/or their associates committed violations regarding student-athletes 1 and 2.

Particular instances of lack of institutional control were exhibited in deficiencies in the following areas alleged by the enforcement staff: a) monitoring of student-athlete 1's

automobile registration; b) monitoring of student-athlete 1's employment at the office of a sports marketing agent; c) involvement of boosters and agents in the recruiting process; d) monitoring the number of countable coaches in the football program; and e) monitoring long distance telephone calls made from the department of athletics.

IV. PENALTIES IMPOSED BY THE COMMITTEE ON INFRACTIONS. [Please note that the cites below are the cites as they appear in the Committee on Infractions report dated June 10, 2010.]

The Committee on Infractions imposed additional penalties because of the involvement of the University of Southern California in a number of the violations. The penalties in imposed on University of Southern California are set forth in Part C:

This case centered on agent and amateurism violations involving student-athletes 1 and 2, two of the most high-profile student-athletes ever to attend the institution. Both were widely known to have elevated potential for lucrative professional careers, and, in fact, the institution acknowledged that student-athlete 2 was a "one and done." The violations spanned almost four full years, beginning at least by December 2004 with student-athlete 1 and ending only with the departure of student-athlete 2 from campus following the 2007-08 men's basketball season. Student-athlete 1 was employed by sports marketer A with the assistance, knowledge and approval of the institution. The institution also willingly worked with representative B in the recruitment of student-athlete 2, even though representative B was known to have been involved in prior NCAA rules violations, one at this institution and one at another institution and despite the fact that his assistance in the recruitment of student-athlete 2 made him a representative. There were additional warning signs throughout the recruitment process.

The violations concerning student-athlete 1 included the receipt of a vehicle, a rent-free home for his parents, airline tickets to institutional football games and lodging at those games, cash, limousine transportation, furniture and appliances. The violations concerning student-athlete 2 included cash, electronic devices and associated services, meals, transportation for him, his brother and friends, and a television. The failure of the institution to recognize warning signs, to be proactive in monitoring its athletics program, and to follow through on information regarding possible rules violations resulted in a finding of lack of institutional control. As set forth earlier in this report, the committee notes with

concern that the institution's staffing commitment to compliance has been at times insufficient for an institution with an athletics program of the scope, depth and size as the one at USC. A serious commitment to Division I athletics must include a serious commitment to appropriate compliance.

In determining the appropriate penalties to impose, the committee considered the institution's self-imposed penalties and corrective actions. [Note: The institution's corrective actions are contained in Appendix Two.]

The committee seriously considered the imposition of a television ban as a penalty in this case. After lengthy discussion, the committee ultimately decided that the imposition of other significant penalties, as set forth here, adequately responded to the nature of the violations found in this case and the level of institutional responsibility. Therefore, a television ban need not be imposed. The committee notes, however, that the television ban is a penalty designed in part to ameliorate extensive and positive media and public attention gained by a program through commission of violations. The committee also notes that the decision in this case not to impose the penalty was a very close call. All student-athletes, coaches, administrators, boosters and agents must understand that violations of NCAA rules have severe consequences.

The committee also considered the institution's cooperation in the processing of this case. Cooperation during the infractions process is addressed in Bylaw 19.01.3 - **Responsibility to Cooperate**, which states in relevant part that, "All representatives of member institutions shall cooperate fully with the NCAA Enforcement Staff, Committee on Infractions, Infractions Appeals Committee and Board of Directors. The enforcement policies and procedures require full and complete disclosure by all institutional representatives of any relevant information requested by the NCAA Enforcement Staff, Committee on Infractions or Infractions Appeals Committee during the course of an inquiry." Further, NCAA Bylaw 32.1.4 – **Cooperative Principle**, also addresses institutional responsibility to fully cooperate during infractions investigations, stating, in relevant part, "The cooperative principle imposes an affirmative obligation on each institution to assist the enforcement staff in developing full information, to determine whether a possible violation of NCAA legislation has occurred and the details thereof." The committee determined that the cooperation exhibited by the institution met its obligation under Bylaws 19.01.3.3 and 32.1.4. The cooperation the institution demonstrated in this case must be weighed against the conduct and failures of the institution and its personnel as set forth in Findings B-1-(b), B-6 and B-7. The

committee concluded that in light of the serious nature of the violations and the failure of the institution to detect and/or prevent them, the institution's cooperation did not warrant relief in the penalties imposed by the committee in this case.

Finally, as stated in the introduction of this report, USC is a “repeat violator” under the provisions of Bylaw 19.5.2.3 and was at risk for enhanced penalties set forth in Bylaw 19.5.2.3.2. Although the committee chose not to impose any of these enhanced penalties, stiff sanctions are warranted in light of the serious violations found by the committee and the fact the institution is a “repeat violator.”

The committee imposes the following penalties. The institution's self-imposed penalties are noted.

1. Public reprimand and censure.
2. Four years of probation from June 10, 2010, through June 9, 2014.
3. The institution's men's basketball team ended its 2009-10 season with the playing of its last regularly scheduled, in-season contest and was not eligible to participate in any postseason competition, including a foreign tour, following the season. (Institution imposed)
4. The institution's football team shall end its 2010 and 2011 seasons with the playing of its last regularly scheduled, in-season contest and shall not be eligible to participate in any postseason competition, including a bowl game, following the season. Moreover, during the two years of this postseason ban, the football team may not take advantage of the exceptions to the limit in the number of football contests that are provided in Bylaw 17.9.5.2, with the exception of a spring game as set forth in Bylaw 17.9.5.2-(a).
5. Pursuant to NCAA Bylaws 19.5.2.2-(e)-(2) and 31.2.2.3-(b), the institution will vacate all wins in which student-athlete 1 competed while ineligible, beginning in December 2004.

6. Pursuant to NCAA Bylaws 19.5.2.2-(e)-(2) and 31.2.2.3-(b), the institution will vacate all wins in which student-athlete 2 competed during the 2007-08 regular seasons. (Institution imposed)
7. Pursuant to NCAA Bylaws 19.5.2.2-(e)-(2) and 31.2.2.3-(b), the institution will vacate all wins in which the women's tennis student-athlete competed while ineligible between November 2006 and May 2009. (Institution imposed)
8. Regarding penalties C-5, C-6 and C-7, the vacations shall be effected pursuant to NCAA Bylaws 19.5.2.2-(e)-(2) and 31.2.2.3-(b) and shall include participation in any postseason competition, including football bowl games, conference tournaments and NCAA championships. The individual records of student-athlete 1, student-athlete 2 and the former women's tennis student-athlete shall also be vacated for all contests in which they competed while ineligible. Further, the records of the head coaches of the affected sports shall be reconfigured to reflect the vacated results. Finally, the institution's records regarding football, men's basketball and women's tennis shall be reconfigured to reflect the vacated institutional, coaches' and student-athletes' records in all publications in which records for football, men's basketball and women's tennis are recorded, including, but not limited to, institutional media guides, recruiting materials, electronic and digital media, and institutional and NCAA archives. Any reference to the vacated results, including championships, shall be removed from athletics department stationery, banners displayed in public areas, and any other forum in which they appear.

To ensure that all institutional and student-athlete vacations are accurately reflected in official NCAA publications and archives, the sports information director (or other designee as assigned by the director of athletics) must contact the NCAA Director of Statistics to identify the specific student-athletes and contests impacted by the order of vacation. In addition, the institution must provide the NCAA statistics department a written report, detailing the discussions with the director of statistics. This document will be maintained in the permanent files of the statistics department. The written report must be delivered to the NCAA statistics department no later than 45 days following the initial Committee on

Infractions report release or, if the vacation is appealed, the final adjudication of the appeal.

9. Limit of 15 initial grants-in-aid and 75 total grants in football for each of the 2011-12, 2012-13 and 2013-14 academic years.
10. Limit of 12 grants-in-aid in men's basketball for 2009-10 and 2010-11 academic years. (Institution imposed)
11. Reduce by one the number of men's basketball coaches permitted to engage in off-campus recruiting activity in summer 2010. [USC will have no more than two coaches on road at any time (three permitted)]. (Institution imposed)
12. Reduce the total number of recruiting days in men's basketball by 20 days (from 130 to 110) for the 2010-11 academic year. (Institution imposed)
13. A fine of \$5,000 for student-athlete 1's amateurism violations. (Institution imposed)
14. Return to the NCAA the \$206,020 the institution received through the Pacific-10 Conference for its participation in the 2008 men's basketball championship. (Institution imposed) Additionally, due to the ineligible participation of student-athlete 2, and consistent with the NCAA Division I Infractions Appeals Committee's January 24, 2000, decision in the Purdue University appeal, the institution shall return to the NCAA all of the moneys it has received to date through Pacific-10 Conference revenue sharing for its appearances in the 2008 NCAA Division I Men's Basketball Championship Tournament. Further, all future conference distributions to the institution resulting from its appearance in the 2008 Men's Basketball Tournament that are scheduled to be provided to the institution shall be withheld by the conference and forfeited to the NCAA. A complete accounting of this financial penalty shall be included in the institution's annual compliance reports and, after the conclusion of the probationary period, in correspondence from the conference to the office of the Committees on Infractions.
15. Disassociation of student-athlete 1. (Institution imposed)

16. Disassociation of student-athlete 2. (Institution imposed)
17. Disassociation of representative B. (Institution imposed)
18. Further, regarding the disassociations of student-athlete 1, student-athlete 2 and representative B, pursuant to NCAA Bylaws 19.5.2.2-(1) and 19.5.2.6, the institution shall show cause why it should not be penalized further if it fails to permanently disassociate student-athlete 1 and 2 and representative B from the institution's athletics program based on their involvement in the violations set forth in this report. These disassociations shall include:
 - a. Refraining from accepting any assistance from the individuals that would aid in the recruitment of prospective student-athletes or the support of enrolled student-athletes;
 - b. Refusing financial assistance or contributions to the institution's athletics program from the individuals;
 - c. Ensuring that no athletics benefit or privilege is provided to the individuals, either directly or indirectly, that is not available to the public at large; and
 - d. Implementing other actions that the institution determines to be within its authority to eliminate the involvement of the individuals in the institution's athletics program.
19. Released three men's basketball prospective student-athletes from their letters of intent. (Institution imposed)
20. The committee is troubled by the institution's failure to regulate access to practices and facilities, including locker rooms. Therefore, for the period of probation, USC shall prohibit all non-institutional personnel, including representatives of the institution's athletics interests (except media, family members and others approved by the compliance office on a case-by-case basis), from doing the following:
 - a. Traveling on football and men's basketball team charters;

- b. Attending football and men's basketball team practices;
 - c. Attending or participating in any way with institutional football and men's basketball camps, including the donation of funds to the camps; and
 - d. Having access to sidelines and locker rooms before, during and after football and men's basketball games. Exceptions may be granted by the compliance office to prospective student-athletes and their families on official paid visits or unofficial visits. The exceptions must be stated in writing and issued by compliance personnel.
21. In reference to reporting and publicizing its infractions, the institution shall:
- a. Inform prospective student-athletes in football, men's basketball, and women's tennis that the institution is on probation until June 9, 2014, of the violations committed in the prospect's sport, and the penalties imposed on that sport program. If a prospective student-athlete takes an official paid visit, then information regarding violations, penalties, and terms of probation must be included with information provided in advance of the visit (five-visit rule, 48-hour rule, etc.). Otherwise, the information must be provided before a prospective student-athlete signs a national letter of intent and no later than when the institution provides a prospective student-athlete with the academic data report and information regarding team APR.
 - b. Publicize the information annually in the media guide (or web posting), if any, in football, men's basketball, and women's tennis, as well as in a general institution alumni publication to be chosen by the institution with the assent of the assistant director of the committee on infractions. A copy of the media guide, alumni publication, and information included in recruiting material shall be included in the compliance reports to be submitted annually to the committee on infractions.
23. During this period of probation, the institution shall:

- a. Continue to develop and implement a comprehensive educational program on NCAA legislation, including seminars and testing, to instruct the coaches, the faculty athletics representative, all athletics department personnel and all institution staff members with responsibility for the certification of student-athletes for admission, retention, financial aid or competition;
 - b. Submit a preliminary report to the office of the Committees on Infractions by July 31, 2010, setting forth a schedule for establishing this compliance and educational program; and
 - c. File with the office of the Committees on Infractions annual compliance reports indicating the progress made with this program by February 15 of each year during the probationary period. Particular emphasis should be placed on monitoring of agents and their associates in their interaction with prospective student-athletes and student-athletes, monitoring student-athlete employment, monitoring access to facilities used by student-athletes for practice and competition, monitoring student-athlete activities involving prospective student-athletes on official visits, student-athlete automobile information, and student-athlete housing. The institution shall include in each annual compliance report copies of any secondary violation self reports in football, men's basketball, and women's tennis, together with information as to who committed the violation if such information is not provided in the self report.
 - d. The reports must also include documentation of the institution's compliance with the penalties adopted and imposed by the committee.
24. The above-listed penalties are independent of and supplemental to any action that has been or may be taken by the Committee on Academic Performance through its assessment of contemporaneous, historical, or other penalties.
 25. At the conclusion of the probationary period, the institution's president shall provide a letter to the committee affirming that the institution's

current athletics policies and practices conform to all requirements of NCAA regulations.

V. ISSUES RAISED ON APPEAL.

In its written appeal and supplemental written appeal, Southern California asserted that (a) the penalties imposed on the institution should be reduced because they “are not supported by the facts and are excessive”; and (b) the Committee on Infractions' findings of violations B-1-b, B-2, B-2-a, and B-7 “are contrary to the evidence, based upon facts that do not constitute a violation and compromised by procedural error.”

VI. APPELLATE PROCEDURE.

In considering Southern California’s appeal, the Infractions Appeals Committee reviewed the notice of appeal; the transcript of the institution’s February 18 – 20, 2010, hearing before the Committee on Infractions and the submissions by Southern California and the Committee of Infractions referred to in Section II of this report.

The hearing on the appeal was held by the Infractions Appeals Committee January 22, 2011, in Indianapolis, Indiana. Southern California was present and was represented by its attorney, president, athletics director, general counsel and secretary of the university, vice president, athletic compliance and senior vice president, administration. The Committee on Infractions was represented by the appeals coordinators for the Committee on Infractions, the director of the Infractions Committees and the assistant director of the Infractions Committees. Also present were the vice president of enforcement, director of enforcement, associate director of enforcement, director of agent, gambling and amateurism activities, associate director of agent, gambling and amateurism activities and assistant general counsel of the NCAA. The hearing was conducted in accordance with procedures adopted by the committee pursuant to NCAA legislation.

VII. INFRACTIONS APPEALS COMMITTEE’S RESOLUTION OF THE ISSUES RAISED ON APPEAL.

The institution raises several issues on appeal. Stated generally, and summarized, those issues are that (a) the penalties imposed on the institution should be reduced because they “are not supported by the facts and are excessive”; and (b) the Committee on Infractions'

findings of violations B-1-b, B-2, B-2-a and B-7 “are contrary to the evidence, based upon facts that do not constitute a violation and compromised by procedural error.”

Findings of Violations.

The institution argues the following with respect to findings of violations:

- *The finding of unethical conduct is “contrary to the evidence, based on incompetent evidence and compromised by procedural error”*

While this argument was included in the institution’s appeal, it ultimately was determined that the institution did not have standing to appeal that finding since it was made against the institution’s former assistant football coach and not the institution itself.¹ Accordingly, this issue was rendered moot for purposes of this appeal, and this committee makes no determination regarding it in this report.

- *The Committee on Infractions “erred in concluding that sports marketer A, sports marketer B and agency were representatives of USC’s athletic interests”*

The institution specifically takes issue with the Committee on Infractions’ findings that sports marketer A, sports marketer B and the agency, “became representatives of USC’s athletics interests by hiring three USC student-athletes” and that “summer positions were created exclusively for USC student athletes” (Written Appeal Page No. 5) The Committee on Infractions argues in response that it “weighed conflicting evidence” and ultimately concluded that the internship at least initially was created exclusively for student-athletes of the institution. (Committee on Infractions Response Page No. 16) The Committee on Infractions notes further that Finding B-2 should not to be vacated even if this committee were to conclude that sports marketer A, sports marketer B and the agency did not become representatives of Southern California athletics interests at

¹ Specifically, the NCAA Division I Legislative Review and Interpretations Committee was asked to interpret Bylaws 32.10.1.1 and 32.10.1.2. Legislative Review and Interpretations Committee confirmed that an institution may not appeal findings of violation or penalties imposed on an individual by the Committee on Infractions. The institution appealed that confirmation to the NCAA Division I Legislative Council, which affirmed the Legislative Review and Interpretations Committee’s bylaw interpretation. In a related regard, we note that the Committee on Infractions’ coordinator of appeals stated at the hearing of this case that the penalties imposed against the football program were not based on, or enhanced because of, any NCAA violations committed by the former assistant football coach who was the subject of the findings of violations pertinent to this point. Thus, this committee did not consider those findings of violations when deciding the penalty appeal issues addressed below.

the time the internship was created: “By November 2005, the COI found that sports marketer A and sports marketer B were giving benefits to student-athlete 1 and his family and, therefore, were representatives of USC's athletics interests . . . USC has not appealed these findings.” (Committee on Infractions Response Page No. 17; internal citation omitted.)

We are persuaded that there is sufficient evidence to support the Committee on Infractions' conclusions regarding these issues, and find no basis on which to reverse the pertinent findings.

- *The Committee on Infractions' finding of lack of institutional control “should be set aside because some of the facts found by the committee did not constitute a violation of NCAA rules, and the committee failed to consider a number of mitigating factors.”*

One of the institution's principal arguments regarding this point is that the Committee on Infractions based its finding of lack of institutional control on a "heightened duty" to monitor elite student-athletes, and that “NCAA bylaws do not set forth any ‘heightened duty’ standard, nor do they differentiate between ‘elite’ athletes and other student-athletes.” (Written Appeal Page No. 37) However, we do not see the Committee on Infractions' statements as establishing a new or different standard not permitted by the applicable bylaws. Rather, we note the Committee on Infractions' explanation that “high profile athletes at a high profile program are at greater risk and need to be more vigilantly monitored,” and its corollary conclusion that at this institution the “resources committed to compliance were inadequate” (Committee on Infractions Response Page No. 17) It therefore was fully permissible for the Committee on Infractions to conclude, as it did, that the institution's:

“ . . failure to adequately monitor its star athletes coupled with its lax compliance efforts fostered an atmosphere that made it too easy for unscrupulous agents to provide impermissible benefits to [the institution's] . . . student athletes with little fear they would be caught.” (Committee on Infractions Response Page No. 7.)

The institution also argues that the finding should be reversed because (a) the Committee on Infractions was critical of student-athlete 1's summer employment and disability insurance, yet found no violations regarding either; (b) remaining

issues related to the football program were “insufficient to support a finding of lack of institutional control” (Written Appeal Page No. 34); and (c) with respect to the involvement of boosters and agents in the men’s basketball recruiting process, the Committee on Infractions “failed to consider and weigh a number of mitigating factors” (Written Appeal Page No. 35).

Despite these arguments, we find no basis on which to reverse the Committee on Infractions’ finding of lack of institutional control. More particularly, but without limitation, there was evidence sufficient to permit the Committee on Infractions to determine that the institution had devoted inadequate resources to its compliance program, especially when the institution learned that problems with the compliance program were developing.

Penalties.

The institution argues that the penalties imposed by the Committee on Infractions were excessive and to that extent constituted an abuse of discretion. More specifically, the institution argues that (a) the Committee on Infractions “has imposed significantly lesser sanctions in major infractions cases based on similar violations”; (b) “abused its discretion in imposing a two-year post-season ban and drastic scholarship reductions in football for the violations in this case”; and (c) “the scholarship reductions are excessive, particularly when considering their unintended actual impact.” (Written Appeal Page Nos. 8, 12 and 18)

This committee stated in the Alabama State case as follows:

“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. Applying this analysis to this case, we conclude that imposition of the five-year probation constituted an abuse of discretion.” [Alabama State University, Public Infractions Appeals Committee Report, June 30, 2009, Page No. 23.]

Guided by that standard, we find no error or abuse of discretion in the imposition of either the two-year postseason ban or the grants-in-aid reduction.

We note in particular the Committee on Infractions' recognition that this was the institution's sixth major infractions case involving football, and that the institution had last been before the Committee on Infractions in June 2001, fewer than four years before the violations which occurred in this case. Thus, the institution was a "repeat violator" under Bylaw 19.5.2.3 and therefore at risk for enhanced penalties set forth in Bylaw 19.5.2.3.2. As the Committee on Infractions stated in its response to the institution's appeal:

“Although the COI ultimately chose not to impose any of the enhanced penalties, it noted that "stiff sanctions are warranted in light of the serious violations found by the committee and the fact the institution is a "repeat violator". Those stiff penalties are particularly warranted because the school failed to take to heart the lessons it should have learned in 2001.” (Committee on Infractions Response Page No. 9)

Thus, we believe that the penalties imposed make clear to other institutions the message which the Committee on Infractions intended to convey:

“Similar strong penalties will be meted out to institutions that do [not] take the problem of sports agents and their runners seriously. It is not enough for institutions simply to educate student athletes about the dangers of unscrupulous agents. Schools must have appropriate staff and procedures in place to combat this significant problem. An institution that does not foster a climate of compliance on its campus should expect serious consequences.” (Committee on Infractions Response Page No. 8)

In reaching this decision, this committee closely considered both the institution and the Committee on Infractions' substantial arguments regarding the application to this case of prior decisions of both the Committee on Infractions and this committee, including the University of Alabama (Committee on Infractions Public Report February 1, 2002, Infractions Appeals Committee Public Report September 17, 2002) case, the University of Michigan (Committee on Infractions Public Report May 8, 2003, Infractions Appeals Committee Public Report September 25, 2003) case, and the Florida State University (Committee on Infractions Public Report March 19, 1996, Infractions Appeals Committee Public Report October 1, 1996) case. Indeed, we have recognized since the University of Mississippi (May 1, 1995) case that a “factor of particular significance in

considering an appeal of penalties is the review and analysis of the penalty or penalties imposed when compared with the penalty or penalties imposed in other cases with similar characteristics.” [University of Mississippi, Public Infractions Appeals Committee Report, May 1, 1995, Page No. 14.] However, we also stated in the 2002 University of Alabama case that “the Committee on Infractions must have latitude in tailoring remedies to the particular circumstances involved in each case and that the universe of relevant cases is not static, but evolving.” [Alabama, Public Infractions Appeals Committee Report, September 17, 2002, Page No. 20]. Given this latitude afforded the Committee on Infractions, there is no basis on which to conclude that the Committee on Infractions departed from prior decisions, much less to any impermissible extent.²

The institution placed particular reliance on the Committee on Infractions’ decision in the 1996 Florida State case, arguing that the case “illustrates how the [Committee on Infractions] historically has penalized universities for amateurism violations.” (Written Appeal Page No. 8) While the institution's observation regarding that case may be correct, we also must make clear that the principle of guidance from prior decisions is not an unyielding directive. It is instead a matter of considered judgment to be applied along with all other factors which this committee has recognized should guide the Committee on Infractions and this committee. And, one very important factor in the application of that principle, and in determining the extent to which a prior decision should guide a present decision,³ is change in the matters to which the decisions of the Committee on Infractions and this committee are directed. The Committee on Infractions should not be strictly bound to a decision made fifteen years earlier, when the circumstances of intercollegiate athletics were qualitatively different than those which presently obtain. This, of course, does not mean that prior decisions provide no restraint on or guidance to the Committee on Infractions and this committee, or that insignificant changes in the environment in which NCAA member institutions operate can justify ignoring those prior decisions. It means only that the guidance provided by prior decisions is, and always has been, a matter of judgment. In this case, we cannot say that the Committee on Infractions improperly exercised that judgment.

² We note in particular the Committee on Infractions’ extensive discussion of the Alabama, Michigan, and Florida State cases, at Page Nos. 12-15 of its response to this appeal. While we do not necessarily agree with all of the Committee on Infractions’ points made there, the discussion makes clear that none of the facts of, or penalties imposed in, those cases demonstrate an abuse of discretion in this case.

³ And, to state the matter more particularly for purposes of this case, whether penalties imposed in a given case can properly be significantly different from penalties imposed in a prior case when the facts underlying both cases are substantially similar.

VIII. CONCLUSION.

Findings of violations B-2, B-2-a and B-7 as well as penalties C-4 and C-9 are affirmed.⁴

NCAA Infractions Appeals Committee⁵

Christopher L. Griffin, chair
Jack Friedenthal
William Hoye
Patti Ohlendorf
David Williams.

⁴ According to the Division I Infractions Appeals Committee Policies and Procedures (See III.A.2.d at Page No. 4), any penalty that is appealed is automatically stayed through the course of the appeal process. This stay begins on the filing of the notice of appeal by the appellant and ends on the public release of this committee's decision. In this case, Southern California requested and was given relief from the stay of penalty C-4 (postseason ban). Therefore, the first year of affirmed penalty C-4 (two-year postseason ban) already has been applied and the remaining part of the penalty shall be applied following the 2011 season. Because the stay remained in place with respect to penalty C-9 (grants-in-aid reduction), the three years of that penalty shall be applied in the 2012-13, 2013-14 and 2014 -15 academic years.

⁵ William Hoye replaced Susan Cross Lipnickey who recused herself from this case.