



IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO; and)	
	)	Civil Division
WILLIAM KENNEY and JOSEPH V. ("JAY"))	
PATERNO,	)	Docket No. 2013-2082
former football coaches at Pennsylvania State)	
University,	)	Motion to Compel Discovery Responses
	)	and for an Order Overruling Objections
Plaintiffs,	)	to Third Party Discovery
	)	Filed on Behalf of Plaintiffs
v.)	
NATIONAL COLLEGIATE ATHLETIC)	
ASSOCIATION ("NCAA");)	
)	
MARK EMMERT, individually and as	)	Counsel of Record:
President of the NCAA;)	Thomas J. Weber
)	GOLDBERG KATZMAN, P.A.
and)	4250 Crums Mill Road, Suite 501
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EDWARD RAY, individually and as former)	Harrisburg, PA 17112
Chairman of the Executive Committee of the)	Telephone: (717) 234-4161
NCAA,	)	Email: tjw@goldbergkatzman.com
)	
Defendants.	)	Wick Sollers (admitted <i>pro hac vice</i>)
)	L. Joseph Loveland (admitted <i>pro hac vice</i>)
)	Patricia L. Maher (admitted <i>pro hac vice</i>)
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FILED FOR RECORD
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PROTHONOTARY
CENTRE COUNTY, PA

PLAINTIFFS' MOTION TO COMPEL DISCOVERY RESPONSES AND FOR AN ORDER OVERRULING OBJECTIONS TO THIRD PARTY DISCOVERY

AND NOW COME Plaintiffs the Estate of Joseph Paterno, William Kenney and Joseph V. Jay Paterno ("Plaintiffs"), by and through their counsel, and move This Honorable Court for

an order compelling Defendant the National Collegiate Athletic Association (“the NCAA”) to respond to Plaintiffs’ discovery requests that the NCAA has refused to answer on the asserted grounds that the information sought is not relevant to any legal or factual issues in the case, despite the clear relevance of the information to assessing whether the NCAA acted with “malice,” an element of several of the claims in this case. The NCAA has objected to every one of those discovery requests on grounds that the information requested is only relevant to the contract claim that has been dismissed. The NCAA has also objected to Plaintiffs’ efforts to obtain discovery from third parties on the same grounds. In particular, the NCAA has objected to Plaintiffs’ notice of intent to serve a deposition subpoena *duces tecum* to the former chair of the NCAA’s Committee on Infractions and document subpoenas to members of that committee on grounds that the witness would not have information relevant to the claims remaining in this action, and the documents subpoenaed would not be relevant to any claim remaining in this case.

Plaintiffs respectfully submit that the discovery they have sought by each of these means is relevant to the issue of malice that is an element of the commercial disparagement claim asserted by the Estate of Joseph Paterno and the defamation claims of Plaintiffs Jay Paterno and William Kenney.¹ In addition, each of the Plaintiffs has asserted claims for punitive damages, to which a showing of malice is relevant. All of the Plaintiffs’ discovery requests at issue in this motion seek information that bears on a showing of malice. For the reasons set forth more fully below, Plaintiffs respectfully request that the Court overrule the NCAA’s relevance objections to the interrogatories and requests for admission, and order that substantive responses be provided to those requests. Plaintiffs also request that the Court overrule the NCAA’s objections to the

¹ Malice is an element to be proved by defamation plaintiffs who are public figures or limited purpose public figures, and plaintiffs do not concede that Plaintiff William Kenney is even a limited purpose public figure.

issuance of a deposition subpoena to Mr. Banowsky and the document subpoenas to other third parties.

1. On January 8, 2016, Plaintiffs served their fifth set of interrogatories on Defendant NCAA, which contains four separate interrogatories. Ex. 1, Interrogatories from Plaintiffs to Defendant NCAA.
2. On January 15, 2016, Plaintiffs served a second set of Requests for Admissions on Defendant NCAA, which contains two requests for admission. Ex. 2, Plaintiffs' Second Set of Requests for Admission to Defendant National Collegiate Athletic Association.
3. By agreement, the NCAA served its responses to both discovery requests on February 15, 2016. Exs. 3 and 4, The NCAA's Responses and Objections to Plaintiffs' Interrogatories; and The National Collegiate Athletic Association's Responses and Objections to Plaintiffs' Second Set of Requests for Admission.
4. The NCAA objected to both requests for admission on grounds that they are "irrelevant and not calculated to lead to the discovery of admissible evidence. The Court has dismissed the Estate's breach of contract claims as a matter of Pennsylvania law. The Request has nothing to do with any legal or factual question remaining in the case." Ex. 4 at 1-2.

5. The NCAA also objected to each the four interrogatories on grounds that the information sought has no bearing on any element of the issue or claims remaining in this case.² Ex. 3 at 5-6.
6. On January 29, Plaintiffs served a notice of intent to serve a deposition subpoena with a document request to Britton Banowsky, who was the Chair of the NCAA's Committee on Infractions in 2011-2012. Ex. 5, Notice of Intent to Serve A Subpoena to Britton Banowsky. The NCAA Committee on Infractions is responsible for administration of the NCAA enforcement program. NCAA Bylaw, Article 19.1 Ex. 6, 2011-2012 NCAA Division I Manual, at 320.
7. On February 18, 2016, the NCAA served objections to the issuance of a deposition subpoena to Mr. Banowsky. In sum, the NCAA objected that Mr. Banowsky would have no information relevant to the claims in the case. The NCAA contends that the subpoena would harass and burden a third party who has no information relevant to the remaining claims in the case. Ex. 7, NCAA Objections to Plaintiffs' Proposed Subpoena Pursuant to Rule 4009.21.
8. Plaintiffs also served a Notice of Intent to serve subpoenas for documents on other members of the NCAA Committee on Infractions in 2011-2012. Ex. 8, Notice of Intent to Serve A Subpoena To Produce Documents and Things for Discovery Pursuant to Rule 4009.21.
9. The parties agreed to suspend the 20-day period for the document subpoenas so they could confer about the NCAA's objections to them.

² The NCAA also objected to the interrogatories on grounds that they call for disclosure of highly confidential information about enforcement proceedings, even though the interrogatories did not seek names or particulars of specific enforcement proceedings.

10. The NCAA served separate interrogatories on the Plaintiffs on January 27 in which they asked each Plaintiff to “state all facts that support your claim that the NCAA acted with actual malice” in connection with the alleged defamation or commercial disparagement. Exs. 9, 10 and 11, Third Set of Interrogatories By the National Collegiate Athletic Association to Plaintiff Estate of Joseph Paterno; Third Set of Interrogatories By the National Collegiate Athletic Association to Plaintiff William Kenney Third Set of Interrogatories By the National Collegiate Athletic Association to Plaintiff Joseph V. (“Jay”) Paterno.
11. Plaintiffs respectfully request that the Court overrule the NCAA’s objections to their discovery requests on grounds that the information sought is relevant to showing of malice, which is an element of claims in the case and to Plaintiffs’ claims for punitive damages.
12. This Motion is made on the basis of the attached supporting Memorandum.

Date: February 29, 2016

By: 

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Counsel for Plaintiffs

Exhibit 1

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO;)	
)	Civil Division
AL CLEMENS, member of)	
the Board of Trustees of Pennsylvania State)	Docket No. 2013-2082
University; and)	
)	Counsel of Record:
WILLIAM KENNEY and JOSEPH V. ("JAY"))	Thomas J. Weber
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University,)	P.O. Box 6991
)	Harrisburg, PA 17112
Plaintiffs,)	Telephone: (717) 234-4161
)	Email: tjw@goldbergkatzman.com
v.)	
)	
NATIONAL COLLEGIATE ATHLETIC)	Wick Sollers (admitted <i>pro hac vice</i>)
ASSOCIATION ("NCAA");)	L. Joseph Loveland (admitted <i>pro hac vice</i>)
)	Patricia L. Maher (admitted <i>pro hac vice</i>)
MARK EMMERT, individually and as)	Ashley C. Parrish (admitted <i>pro hac vice</i>)
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Chairman of the)	jloveland@kslaw.com
Executive Committee of the NCAA,)	pmaher@kslaw.com
)	aparrish@kslaw.com
Defendants,)	
)	
And)	
)	
PENNSYLVANIA STATE UNIVERSITY,)	
)	
Defendant.)	
)	

INTERROGATORIES FROM PLAINTIFFS TO DEFENDANT NCAA

Plaintiffs the Estate of Joseph Paterno (the "Estate"), William Kenney, and Joseph V. ("Jay") Paterno, and, by and through their counsel, hereby propound, pursuant to Pa. R.C.P. No. 4005, the following Interrogatories, numbered 1 through 4, to be answered fully in writing and

under oath within thirty (30) days of service, in accordance with the Instructions and Definitions set forth herein.

INSTRUCTIONS

The following instructions are applicable throughout these Interrogatories and are incorporated into each specific Interrogatory:

1. These instructions and definitions should be construed to require responses based upon the knowledge of, and information available to, the responding party, the Defendant NCAA, as well as its agents, representatives, and, unless privileged, attorneys and accountants, including but not limited to Latham & Watkins, LLP and Killian & Gephart, LLP.

2. These Interrogatories are continuing in character, so as to require that supplemental responses be served promptly if additional or different information is obtained with respect to any Interrogatory.

3. No part of an Interrogatory should be left unanswered merely because an objection is interposed to another part of the Interrogatory. If a partial or incomplete answer is provided, the responding parties shall state that the answer is partial or incomplete.

4. All objections shall be set forth with specificity and shall include a brief statement of the grounds for such objections.

5. Each Interrogatory shall be read to be inclusive rather than exclusive. Accordingly, the words "and" as well as "or" shall be construed disjunctively or conjunctively as necessary, in order to bring within the scope of each Interrogatory all information that might otherwise be construed to be outside its scope. "Including" shall be construed to mean "including, without any limitation." The word "all" includes "any" and vice versa. The past tense shall include the present tense so as to make the request inclusive rather than exclusive.

The singular shall include the plural and vice versa. The masculine includes the feminine and vice versa.

6. If you elect to specify and produce business records in answer to any Interrogatory, the specification shall be in sufficient detail to permit the interrogating party to readily locate and identify the business records from which the answer may be ascertained. You may identify such documents by Bates numbering them.

7. If, in answering these Interrogatories, you encounter any ambiguity when construing a question, instruction, or definition, your answer shall set forth the matter deemed ambiguous and the construction used in answering.

DEFINITIONS

Notwithstanding any definition set forth below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under Pa. R.C.P. No. 4003.1. As used in these Requests, the following terms are to be interpreted in accordance with these definitions:

1. "You," "your," "yours," "Defendant," and "NCAA" shall refer to Defendant NCAA, to whom these Requests are directed, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of the NCAA.

2. "Plaintiff" shall refer to Plaintiff Estate of Joseph Paterno, as well as any person acting, authorized to act, or purporting to act on behalf of the Plaintiff.

3. "Communication" means the transmittal of information by any means, and shall mean and be deemed to refer to any writing or oral conversation, including, but not limited to,

telephone conversations, conversations in meetings, letters, memoranda, notes, or electronic communications.

4. “Identify” means to state the person’s full name, present or last known address, and, when referring to a natural person, additionally, the present or last known place of employment. If the business and home telephone numbers are known to the answering party, and if the person is not a party or present employee of a party, said telephone numbers shall be provided. Once a person has been identified in accordance with this subparagraph, only the name of the person need be listed in response to subsequent discovery requesting the identification of that person.

5. “Person” means any natural person or any businesses, corporations, public corporations, municipal corporations, state governments, local governments, agencies, partnerships, groups, associations, or other organizations, and also includes all of the person’s representatives.

6. “Penn State” shall refer to employees, administrators, and personnel of The Pennsylvania State University, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of Penn State.

7. “Jerry Sandusky” or “Sandusky” shall refer to former Penn State assistant football coach Gerald A. Sandusky, as well as any attorney, assignee, agent, representative, or any other person acting, authorized to act, or purporting to act on behalf of Gerald A Sandusky.

8. The “Freeh Firm” refers to the law firm of Freeh, Sporkin & Sullivan, LLP (and any successor entity), as well as attorneys, investigators, or employees of any other firms that aided or worked with the Freeh Firm on the Freeh investigation, as defined infra.

9. The “Freeh investigation” shall refer to the investigation conducted by the Freeh Firm into the alleged failure of certain Penn State personnel to respond to and report certain allegations against Sandusky.

10. The “NCAA investigation” shall refer to any investigation or evaluation of Penn State undertaken by the NCAA following Defendant Emmert’s assertion of NCAA jurisdiction over matters related to Sandusky and Penn State in November 2011.

11. The “Consent Decree” shall refer to the document titled the “Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University,” released on July 23, 2012, as well as all footnotes, exhibits, drafts, and other notes related to the Consent Decree.

INTERROGATORIES

Interrogatory No. 1:

Please state whether the NCAA has relied on the results or report of an investigation conducted by someone other than the NCAA as the basis for imposing sanctions on a member institution or individuals without also conducting its own separate investigation in any instance other than the sanctions imposed pursuant to the July 23, 2012 Consent Decree with Penn State University.

RESPONSE:

Interrogatory No. 2:

If the response to the preceding interrogatory is affirmative, please state the number of times the NCAA has relied on the results or report of an investigation conducted by someone other than the NCAA as the basis for imposing sanctions on a member institution without also conducting its own separate investigation

RESPONSE:

Interrogatory No. 3:

For every instance the NCAA has relied on the report of an investigation conducted by someone other than the NCAA as the basis for imposing sanctions on a member institution

without also conducting its own separate investigation, please state:

- (a) The nature of the underlying infraction(s),
- (b) When the sanctions were imposed,
- (c) What sanctions were imposed,
- (d) Whether the matter was handled by the NCAA's Enforcement personnel.

RESPONSE:

Interrogatory No. 4:

For any instance in which the NCAA has relied on the report of an investigation conducted by someone other than the NCAA as the basis for imposing sanctions on a member institution without also conducting its own separate investigation, please state whether the matter was considered by the NCAA's Committee on Infractions.

RESPONSE:

Dated this 8th day of January 2016



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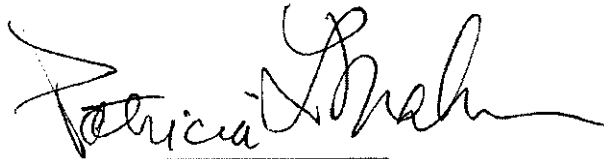
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **FOURTH SET OF INTERROGATORIES FROM PLAINTIFFS TO DEFENDANT NCAA** was served this 8th

day of January, 2016 by first class mail and email on the following:

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Counsel for Plaintiffs

Exhibit 2

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO; and) Civil Division
)
WILLIAM KENNEY and JOSEPH V. ("JAY")) Docket No. 2013-2082
PATERNO, former football coaches at)
Pennsylvania State University,) Discovery
) Filed on Behalf of the Plaintiffs
Plaintiffs,)
)
v.) Counsel of Record:
) Thomas J. Weber
NATIONAL COLLEGIATE ATHLETIC) GOLDBERG KATZMAN, P.C.
ASSOCIATION ("NCAA");) 4250 Crums Mill Road, Suite 301
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of the NCAA; and) Telephone: (717) 234-4161
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EDWARD RAY, individually and as former)
Chairman of the Executive Committee of the) Wick Sollers (admitted <i>pro hac vice</i>)
NCAA,) L. Joseph Loveland (admitted <i>pro hac vice</i>)
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**PLAINTIFFS' SECOND SET OF REQUESTS FOR ADMISSIONS TO DEFENDANT
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION**

Plaintiffs Estate of Joseph Paterno, William Kenney, and Joseph V. ("Jay") Paterno request that defendant National Collegiate Athletic Association ("NCAA") respond to the following Requests for Admission in conformity with Pa. Code Rule 4014 within thirty days from the date of service of these Requests. If an objection is made, please state with specificity

the grounds for the objection. If a matter is not admitted, you must deny it specifically or state in detail why you cannot admit or deny it.

DEFINITIONS

1. The “NCAA” shall refer to the National Collegiate Athletic Association.
2. “Involved individual” refers to that term as it appears in the 2011–12 NCAA Division I Manual, and especially as it appears in bylaw 32.1.5.

REQUESTS FOR ADMISSION

1. The NCAA took the position that only a living person can be an "involved individual" for the first time with respect to Joseph Paterno and his Estate.
2. The NCAA took the position that the procedural rights afforded to an involved individual under its bylaws apply only to living persons for the first time with respect to Joseph Paterno and his Estate.

Date: January 15, 2016

By: 

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PLAINTIFFS' SECOND SET OF REQUESTS FOR ADMISSION TO DEFENDANT NATIONAL COLLEGIATE ATHLETIC ASSOCIATION was served this 15th day of January, 2016 by first class mail and email to the following:

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Counsel for Plaintiffs

Exhibit 3

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

ESTATE of JOSEPH PATERNO, et al.,)	
Plaintiffs,)	
	)	Civil Division
v.)	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al.,	)	Docket No. 2013-
Defendants.	)	2082
)	
)	

**THE NCAA'S RESPONSES AND OBJECTIONS TO PLAINTIFFS'
INTERROGATORIES**

Pursuant to Pennsylvania Rule of Civil Procedure Number 4006, the National Collegiate Athletic Association ("NCAA"), by and through its undersigned counsel, hereby submits its responses and objections to Plaintiffs' Interrogatories dated January 8, 2016 (the "Interrogatories"). The NCAA reserves the right to amend or supplement these responses.

GENERAL OBJECTIONS AND RESPONSES

The following General Objections and Responses are hereby incorporated by reference with the same force and effect as if fully set forth in the specific response to each Interrogatory below.

1. The NCAA objects to the Interrogatories, including the Instructions and Definitions, to the extent that they are vague, ambiguous, and do not specify the information sought with sufficient particularity, thereby requiring speculation to determine their meaning. The specific responses set forth below are based on the NCAA's interpretation of the language used in the Interrogatories. The NCAA reserves the right to amend or supplement its responses in the event Plaintiff asserts an interpretation that differs from the NCAA's interpretation.

2. The NCAA generally responds that no incidental or implied admissions are intended by these responses and no such implications should be made. Except as may be

expressly stated, nothing stated in these responses is an admission as to a fact or existence of a document referred to or assumed in any Interrogatory nor an admission that anything stated in these responses is admissible in evidence, nor a waiver of any objection.

3. The NCAA objects to the Interrogatories, including the Instructions and Definitions, to the extent that they seek to impose requirements or obligations on the NCAA in addition to, beyond the scope of, or different from those imposed by the Pennsylvania Rules of Civil Procedure or any other applicable laws or rules.

4. The NCAA objects to the Interrogatories, including the Instructions and Definitions, to the extent that they seek discovery of information that is publicly available and, therefore, of no greater burden to Plaintiffs to obtain as compared to the burden imposed upon the NCAA.

5. The NCAA objects to the Interrogatories, including the Instructions and Definitions, to the extent they seek information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege. To the extent any such information is or may be disclosed in response to the Interrogatories, the disclosure of any such information is inadvertent and is not to be deemed a waiver of the privilege in question (or any other applicable privilege) with respect to the disclosed information or any other information.

6. The NCAA objects to the Interrogatories, including the Instructions and Definitions, to the extent that they seek information for which Defendant owes a third party an obligation of confidentiality, whether contractual or otherwise.

7. These objections are made without in any way waiving, but, on the contrary, reserving: (i) all questions as to competency, relevance, materiality, privilege, and admissibility as evidence for any purpose of any of the information produced hereunder or the subject matter

thereof; (ii) the right to object on any ground to the use of the information produced hereunder or the subject matter thereof at any trial or hearing in this matter or in any related or subsequent action or proceeding; (iii) the right to object on any ground to a demand for further response or document production; and (iv) the right at any time to revise, supplement, correct, or add to these objections and responses.

**SPECIFIC OBJECTIONS AND RESPONSES TO THE
INSTRUCTIONS & DEFINITIONS**

1. The NCAA objects to Instruction No. 1 on the grounds that it is overly broad and unduly burdensome, and to the extent it requires the NCAA to provide responses based on documents and information not within the NCAA's possession, custody, or control.

2. The NCAA objects to the definitions of "you," "your," "yours," "Defendant," "NCAA," "Penn State," "Jerry Sandusky," and "Sandusky" Definition Nos. 1, 6, and 7 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiffs purport to define these terms to include "any other person acting, authorized to act, or purporting to act on behalf of" the defined person or entity.

3. The NCAA objects to the definition of "Communication" in Definition No. 3 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiffs purport to define this term to include "the transmittal of information by any means," and to the extent it seeks the production of "any ... oral conversations."

4. The NCAA objects to the definition of "Identify" in Definition No. 4 as overly broad and unduly burdensome. Defendant will identify a person by providing said person's first and last name and the institution with which the person is affiliated, if known.

5. Defendant objects to the definition of “Person,” in Definition No. 5 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports to define this term to include “all of the person’s representatives.”

6. The NCAA objects to the definition of “Freeh Firm” in Definition No. 8 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiffs purport to define this term to include all “employees of any other firms that aided or worked with the Freeh Firm on the Freeh investigation, as defined *infra*.”

7. The NCAA objects to the definition of “Freeh investigation” in Definition No. 9 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiffs purport to define the scope or objectives of the matters that were investigated and evaluated by the law firm of Freeh, Sporkin & Sullivan, LLP, at the direction of Penn State University.

8. Defendant objects to the definition of the “NCAA investigation” in Definition No. 10 as vague, ambiguous, overly broad and unduly burdensome. The NCAA did not conduct its own investigation of the matters related to Sandusky and Penn State. Those matters were investigated and evaluated by the law firm of Freeh, Sporkin & Sullivan, LLP, at the direction of Penn State University. Defendant further objects to this definition to the extent that it implies that NCAA asserted jurisdiction it did not otherwise have and to the extent that it implies that Dr. Emmert took action independently from NCAA with respect to matters related to Sandusky and Penn State in November 2011.

9. The NCAA objects to the definition of the “Consent Decree” in Definition No. 11 as vague, ambiguous, overly broad and unduly burdensome to the extent that Plaintiffs purport to define this term to include “all footnotes, exhibits, drafts, and other notes related to the Consent Decree.”

SPECIFIC OBJECTIONS AND RESPONSES TO THE INTERROGATORIES

INTERROGATORY NO. 1:

Please state whether the NCAA has relied on the results or report of an investigation conducted by someone other than the NCAA as the basis for imposing sanctions on a member institution or individuals without also conducting its own separate investigation in any instance other than the sanctions imposed pursuant to the July 23, 2012 Consent Decree with Penn State University.

RESPONSE TO INTERROGATORY NO. 1:

The NCAA objects to this Interrogatory on the grounds that it seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible information. All of the contract claims in this case (and all relief requested therefrom) have been dismissed or withdrawn. This case has been reduced to the three remaining Plaintiffs asserting a set of tort claims: commercial disparagement and defamation, along with derivative tortious interference and civil conspiracy claims. As such, this case now centers exclusively on a limited set of statements contained in the Consent Decree (taken verbatim from the Freeh Report) that allegedly refer to Plaintiffs. The information sought by this interrogatory has no bearing on any element of the remaining issues or claims in this case. The NCAA further objects that this Interrogatory calls for the disclosure of highly confidential information about enforcement proceedings of various member institutions.

INTERROGATORY NO. 2:

If the response to the preceding interrogatory is affirmative, please state the number of times the NCAA has relied on the results or report of an investigation conducted by someone other than the NCAA as the basis for imposing sanctions on a member institution without also conducting its own separate investigation

RESPONSE TO INTERROGATORY NO. 2:

The NCAA refers to and incorporates by reference its response to Interrogatory No. 1.

INTERROGATORY NO. 3:

For every instance the NCAA has relied on the report of an investigation conducted by someone other than the NCAA as the basis for imposing sanctions on a member institution without also conducting its own separate investigation, please state:

- (a) The nature of the underlying infraction(s),
- (b) When the sanctions were imposed,
- (c) What sanctions were imposed,
- (d) Whether the matter was handled by the NCAA's Enforcement personnel.

RESPONSE TO INTERROGATORY NO. 3:

The NCAA refers to and incorporates by reference its response to Interrogatory No. 1.

INTERROGATORY NO. 4:

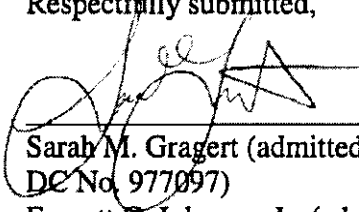
For any instance in which the NCAA has relied on the report of an investigation conducted by someone other than the NCAA as the basis for imposing sanctions on a member institution without also conducting its own separate investigation, please state whether the matter was considered by the NCAA's Committee on Infractions.

RESPONSE TO INTERROGATORY NO. 4:

The NCAA refers to and incorporates by reference its response to Interrogatory No. 1.

Respectfully submitted,

Dated: February 15, 2016



Sarah M. Gragert (admitted *Pro Hac Vice*,
DC No. 977097)

Everett C. Johnson, Jr. (admitted *Pro Hac*
Vice, DC No. 358446)

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*Counsel for the NCAA, Dr. Emmert, and Dr.
Ray*

CERTIFICATE OF SERVICE

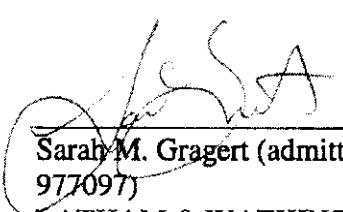
I, Sarah M. Gragert, hereby certify that I am serving *The National Collegiate Athletic Association's Responses and Objections to Plaintiffs' Interrogatories* on the following by email on February 15, 2016 and by first class U.S. mail on February 16, 2016:

Thomas J. Weber, Esquire
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P.O. Box 6991
Harrisburg, PA 17112
Telephone: (717) 234-4161
Email: tjw@goldbergkatzman.com

Wick Sollers, Esquire
L. Joseph Loveland, Esquire
Mark A. Jensen, Esquire
Patricia L. Maher, Esquire
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jlloveland@kslaw.com
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pmaher@kslaw.com
aparrish@kslaw.com

Counsel for Plaintiffs

Dated: February 15, 2016



Sarah M. Gragert (admitted PHV, DC No. 977097)

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Telephone: (202) 637-2200
Email: Sarah.Gragert@lw.com

Counsel for the NCAA, Dr. Emmert, and Dr. Ray

Exhibit 4

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

The ESTATE of JOSEPH PATERNO, et al.,)	
)	
Plaintiffs,)	
)	
v.)	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION	)	Civil Division
("NCAA"), et al.,)	
	)	Docket No. 2013-
Defendants,	)	2082
)	
and)	
)	
PENNSYLVANIA STATE UNIVERSITY,)	
)	
Defendant.)	
)	

**THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S
RESPONSES AND OBJECTIONS TO PLAINTIFFS' SECOND
SET OF REQUESTS FOR ADMISSION**

In accordance with Pennsylvania Rule of Civil Procedure 4014, the National Collegiate Athletic Association (the "NCAA") hereby submits its responses and objections to Plaintiffs' second set of request for admission. The NCAA reserves the right to change or supplement these responses at any time. The fact that the NCAA has responded to any part of any of Plaintiffs' Requests is not intended to be, and shall not be construed to be, a waiver by the NCAA of all or any part of any objection to any Request.

REQUEST FOR ADMISSION NO. 1:

The NCAA took the position that only a living person can be an "involved individual" for the first time with respect to Joseph Paterno and his Estate.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

The NCAA objects to this Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The Court has dismissed the Estate's

breach of contract claim as a matter of Pennsylvania law. This Request has nothing to do with any legal or factual question remaining in the case.

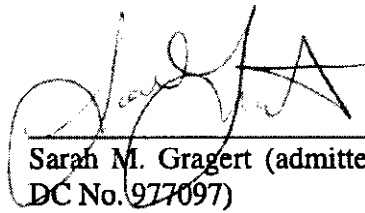
REQUEST FOR ADMISSION NO. 2:

The NCAA took the position that the procedural rights afforded to an involved individual under its bylaws apply only to living persons for the first time with respect to Joseph Paterno and his Estate.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

The NCAA objects to this Request on the grounds that it is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The Court has dismissed the Estate's breach of contract claim as a matter of Pennsylvania law. This Request has nothing to do with any legal or factual question remaining in the case.

Dated: February 15, 2016



Sarah M. Gragert (admitted *Pro Hac Vice*,
DC No. 977097)

Everett C. Johnson, Jr. (admitted *Pro Hac Vice*, DC No. 358446)

Brian E. Kowalski (admitted *Pro Hac Vice*,
DC No. 500064)

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Telephone: (717) 232-1851
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*Counsel for the NCAA, Dr. Emmert, and Dr.
Ray*

CERTIFICATE OF SERVICE

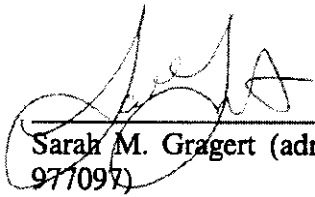
I, Sarah M. Gragert, hereby certify that I am serving *The National Collegiate Athletic Association's Responses and Objections to Plaintiffs' Second Set of Requests for Admission* on the following by email on February 15, 2016, and by U.S. mail on February 16, 2016:

Thomas J. Weber, Esquire
GOLDBERG KATZMAN, P.C.
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P.O. Box 6991
Harrisburg, PA 17112
Telephone: (717) 234-4161
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Wick Sollers, Esquire
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aparrish@kslaw.com

Counsel for Plaintiffs

Dated: February 15, 2016



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Email: Sarah.Gragert@lw.com

Counsel for the NCAA, Dr. Emmert, and Dr. Ray

Exhibit 5

**IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO, et al.	:	: CIVIL ACTION – LAW
	:	
Plaintiffs	:	: DOCKET NO.: 2013-2082
	:	
v.	:	
	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA”), et al.	:	
	:	
Defendants	:	

NOTICE OF INTENT TO SERVE A SUBPOENA TO BRITTON BANOWSKY

Plaintiffs the Estate of Joseph Paterno, William Kenney and Joseph V. (“Jay”) Paterno, by and through their undersigned counsel, intend to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

Dated this 29th day of January, 2016



Thomas J. Weber
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P. O. Box 6991
Harrisburg, PA 17112
Telephone: (717) 234-4161
Wick Sollers
L. Joseph Loveland
Mark A. Jensen
Ashley C. Parrish
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500

Counsel for Plaintiffs


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **NOTICE OF INTENT TO SERVE A SUBPOENA TO BRITTON BANOWSKY** was served this 29th day of January, 2016 by email and first class mail to the following:

Thomas W. Scott
Killian & Gephart
218 Pine Street
P.O. Box 886
Harrisburg, PA 17108-0886
Email: tscott@killiangephart.com

Everett C. Johnson, Jr.
Brian E. Kowalski
Sarah M. Gragert
Latham & Watkins LLP
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Suite 1000
Washington, D.C. 20004-1304
Email: everett.johnson@lw.com
brian.kowalski@lw.com
sarah.gragert@lw.com

Dated this 29th day of January, 2016


Thomas J. Weber
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P. O. Box 6991
Harrisburg, PA 17112
Telephone: (717) 234-4161

Wick Sollers
L. Joseph Loveland
Mark A. Jensen
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1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500

Counsel for Plaintiffs

**IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO, et al.	:	: CIVIL ACTION – LAW
	:	
Plaintiffs	:	: DOCKET NO.: 2013-2082
	:	
v.	:	
	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA”), et al.	:	
	:	
Defendants	:	

SUBPOENA TO ATTEND AND TESTIFY

To: Britton Banowsky
545 E John Carpenter Fwy Ste 1025
Irving, TX 75062-3931

1. You are Ordered by the Court to come to: Dallas Marriott Las Colinas, 223 West Las Colinas Boulevard, Irving, TX 75039 on Monday, February 29, 2016 at 9:30 a.m. to testify on behalf of Plaintiffs in the above-captioned cases and to remain until excused.

2. And bring with you the following: Documents listed on Attachment A hereto. See attached.

If you fail to attend or to produce the documents or things required by the subpoena, you may be subjected to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

Name:	<u>Patricia L. Maher</u>
Address:	<u>King & Spalding LLP, 1700 Pennsylvania Avenue, N.W.</u> <u>Suite 2000, Washington, D. C. 20006</u>
Telephone:	<u>202-626-5504</u>
Supreme Court ID#	<u>Admitted pro hac vice</u>
Attorney for:	<u>Plaintiffs</u>

BY THE COURT:

DATE: _____

Prothonotary/Clerk, Civil Division

Deputy

ATTACHMENT A

For the period January 1, 2011, through December 31, 2015, all documents, including but not limited to memoranda, notes of telephone conversations, handwritten notes, emails from any email account (including but not limited to non-work email accounts such as Gmail or Yahoo Mail) and text messages or short message service (SMS) messages, that evidence, reflect or relate in any way to the following:

- (a) the Penn State football program and/or Penn State employees, football coaches (including, but not limited to, Joseph Paterno, Jay Paterno, and William Kenney), Board of Trustees members, administrators, or agents;
- (b) the NCAA Consent Decree, titled "Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University," dated July 23, 2012, including, but not limited to, drafts of the Consent Decree and any documents that relate in any way to the repeal, dissolution, modification and/or superseding of the Consent Decree, such as the NCAA's January 2015 repeal of the Consent Decree and the superseding Athletics Integrity Agreement that the NCAA terminated in December 2015;
- (c) the decision-making, evaluation, assessment, basis for, and/or process relating to consideration, imposition, or acceptance of any penalty, sanction, violation, and/or infraction of the NCAA's rules, bylaws and/or Constitution by Penn State, its administration, employees, football coaches, Board of Trustee members and/or agents. This request includes, but is not limited to, documents related to disagreements, concerns, objections, questions and/or discussions by the NCAA about the authority and/or jurisdiction of the NCAA to impose such penalty, sanction, violation, and/or infraction, as well as documents related to any repeal, dissolution, modification and/or superseding treatment of such penalty, sanction, violation and/or infraction; and
- (d) the Freeh Report, titled "Report of the Special Investigative Counsel Regarding the Actions of the Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky," prepared by Freeh Sporkin & Sullivan, LLP, and any other actual or stated basis for the statements contained in the Consent Decree.

ATTACHMENT A

For the period January 1, 2011, through December 31, 2015, all documents, including but not limited to memoranda, notes of telephone conversations, handwritten notes, emails from any email account (including but not limited to non-work email accounts such as Gmail or Yahoo Mail) and text messages or short message service (SMS) messages, that evidence, reflect or relate in any way to the following:

- (a) the Penn State football program and/or Penn State employees, football coaches (including, but not limited to, Joseph Paterno, Jay Paterno, and William Kenney), Board of Trustees members, administrators, or agents;
- (b) the NCAA Consent Decree, titled "Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University," dated July 23, 2012, including, but not limited to, drafts of the Consent Decree and any documents that relate in any way to the repeal, dissolution, modification and/or superseding of the Consent Decree, such as the NCAA's January 2015 repeal of the Consent Decree and the superseding Athletics Integrity Agreement that the NCAA terminated in December 2015;
- (c) the decision-making, evaluation, assessment, basis for, and/or process relating to consideration, imposition, or acceptance of any penalty, sanction, violation, and/or infraction of the NCAA's rules, bylaws and/or Constitution by Penn State, its administration, employees, football coaches, Board of Trustee members and/or agents. This request includes, but is not limited to, documents related to disagreements, concerns, objections, questions and/or discussions by the NCAA about the authority and/or jurisdiction of the NCAA to impose such penalty, sanction, violation, and/or infraction, as well as documents related to any repeal, dissolution, modification and/or superseding treatment of such penalty, sanction, violation and/or infraction; and
- (d) the Freeh Report, titled "Report of the Special Investigative Counsel Regarding the Actions of the Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky," prepared by Freeh Sporkin & Sullivan, LLP, and any other actual or stated basis for the statements contained in the Consent Decree.

Exhibit 6



2011-12 NCAA®

DIVISION I MANUAL

EFFECTIVE
AUGUST 1, 2011

CONSTITUTION
OPERATING BYLAWS
ADMINISTRATIVE BYLAWS





THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION

P.O. Box 6222
Indianapolis, Indiana 46206-6222
317/917-6222
ncaa.org
July 2011
[ISSN 1093-3174]

Text Prepared By: NCAA Academic and Membership Affairs Staff.

Production By: NCAA Academic and Membership Affairs Staff.

This publication incorporates final legislative actions taken during the 2010-11 legislative cycle. Legislation adopted after August 1, 2010, interpretations incorporated by the Legislative Review/Interpretations Committee, modifications of wording and editorial revisions are set off by a gray background and also include an adoption or revision date. Readers seeking the legislative history of a given provision (earlier dates of adoption or revision) should consult the appropriate paragraphs in the 1988-89 NCAA Manual or the NCAA academic and membership affairs staff.

Distributed to: directors of athletics; faculty athletics representatives; senior woman administrators; presidents or chancellors; conference commissioners; senior compliance administrators; and reclassifying and affiliated members.

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CONSTITUTION, ARTICLE 1

Name, Purposes and Fundamental Policy

1.1	Name	1
1.2	Purposes	1
1.3	Fundamental Policy	1

1.1 NAME [*]

The name of this organization shall be "The National Collegiate Athletic Association."

1.2 PURPOSES [*]

The purposes of this Association are:

- (a) To initiate, stimulate and improve intercollegiate athletics programs for student-athletes and to promote and develop educational leadership, physical fitness, athletics excellence and athletics participation as a recreational pursuit;
- (b) To uphold the principle of institutional control of, and responsibility for, all intercollegiate sports in conformity with the constitution and bylaws of this Association;
- (c) To encourage its members to adopt eligibility rules to comply with satisfactory standards of scholarship, sportsmanship and amateurism;
- (d) To formulate, copyright and publish rules of play governing intercollegiate athletics;
- (e) To preserve intercollegiate athletics records;
- (f) To supervise the conduct of, and to establish eligibility standards for, regional and national athletics events under the auspices of this Association;
- (g) To cooperate with other amateur athletics organizations in promoting and conducting national and international athletics events;
- (h) To legislate, through bylaws or by resolutions of a Convention, upon any subject of general concern to the members related to the administration of intercollegiate athletics; and
- (i) To study in general all phases of competitive intercollegiate athletics and establish standards whereby the colleges and universities of the United States can maintain their athletics programs on a high level.

1.3 FUNDAMENTAL POLICY [*]

1.3.1 Basic Purpose. [*] The competitive athletics programs of member institutions are designed to be a vital part of the educational system. A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports.

1.3.2 Obligations of Member Institutions. [*] Legislation governing the conduct of intercollegiate athletics programs of member institutions shall apply to basic athletics issues such as admissions, financial aid, eligibility and recruiting. Member institutions shall be obligated to apply and enforce this legislation, and the enforcement procedures of the Association shall be applied to an institution when it fails to fulfill this obligation.

Principles for Conduct of Intercollegiate Athletics

2.01	General Principle	3	2.9	The Principle of Amateurism	4
2.1	The Principle of Institutional Control and Responsibility	3	2.10	The Principle of Competitive Equity	5
2.2	The Principle of Student-Athlete Well-Being	3	2.11	The Principle Governing Recruiting	5
2.3	The Principle of Gender Equity	4	2.12	The Principle Governing Eligibility	5
2.4	The Principle of Sportsmanship and Ethical Conduct	4	2.13	The Principle Governing Financial Aid	5
2.5	The Principle of Sound Academic Standards	4	2.14	The Principle Governing Playing and Practice Seasons	5
2.6	The Principle of Nondiscrimination	4	2.15	The Principle Governing Postseason Competition and Contests Sponsored by Noncollegiate Organizations	5
2.7	The Principle of Diversity within Governance Structures	4	2.16	The Principle Governing the Economy of Athletics Program Operation	5
2.8	The Principle of Rules Compliance	4			

2.01 GENERAL PRINCIPLE [*]

Legislation enacted by the Association governing the conduct of intercollegiate athletics shall be designed to advance one or more basic principles, including the following, to which the members are committed. In some instances, a delicate balance of these principles is necessary to help achieve the objectives of the Association.

2.1 THE PRINCIPLE OF INSTITUTIONAL CONTROL AND RESPONSIBILITY [*]

2.1.1 Responsibility for Control. [*] It is the responsibility of each member institution to control its intercollegiate athletics program in compliance with the rules and regulations of the Association. The institution's president or chancellor is responsible for the administration of all aspects of the athletics program, including approval of the budget and audit of all expenditures. *(Revised: 3/8/06)*

2.1.2 Scope of Responsibility. [*] The institution's responsibility for the conduct of its intercollegiate athletics program includes responsibility for the actions of its staff members and for the actions of any other individual or organization engaged in activities promoting the athletics interests of the institution.

2.2 THE PRINCIPLE OF STUDENT-ATHLETE WELL-BEING [*]

Intercollegiate athletics programs shall be conducted in a manner designed to protect and enhance the physical and educational well-being of student-athletes. *(Revised: 1/21/05)*

2.2.1 Overall Educational Experience. [*] It is the responsibility of each member institution to establish and maintain an environment in which a student-athlete's activities are conducted as an integral part of the student-athlete's educational experience. *(Adopted: 1/10/95)*

2.2.2 Cultural Diversity and Gender Equity. [*] It is the responsibility of each member institution to establish and maintain an environment that values cultural diversity and gender equity among its student-athletes and intercollegiate athletics department staff. *(Adopted: 1/10/95)*

2.2.3 Health and Safety. [*] It is the responsibility of each member institution to protect the health of, and provide a safe environment for, each of its participating student-athletes. *(Adopted: 1/10/95)*

2.2.4 Student-Athlete/Coach Relationship. [*] It is the responsibility of each member institution to establish and maintain an environment that fosters a positive relationship between the student-athlete and coach. *(Adopted: 1/10/95)*

2.2.5 Fairness, Openness and Honesty. [*] It is the responsibility of each member institution to ensure that coaches and administrators exhibit fairness, openness and honesty in their relationships with student-athletes. *(Adopted: 1/10/95)*

2.2.6 Student-Athlete Involvement. [*] It is the responsibility of each member institution to involve student-athletes in matters that affect their lives. *(Adopted: 1/10/95)*

2.3 THE PRINCIPLE OF GENDER EQUITY [*]

2.3.1 Compliance With Federal and State Legislation. [*] It is the responsibility of each member institution to comply with federal and state laws regarding gender equity. *(Adopted: 1/11/94)*

2.3.2 NCAA Legislation. [*] The Association should not adopt legislation that would prevent member institutions from complying with applicable gender-equity laws, and should adopt legislation to enhance member institutions' compliance with applicable gender-equity laws. *(Adopted: 1/11/94)*

2.3.3 Gender Bias. [*] The activities of the Association should be conducted in a manner free of gender bias. *(Adopted: 1/11/94)*

2.4 THE PRINCIPLE OF SPORTSMANSHIP AND ETHICAL CONDUCT [*]

For intercollegiate athletics to promote the character development of participants, to enhance the integrity of higher education and to promote civility in society, student-athletes, coaches, and all others associated with these athletics programs and events should adhere to such fundamental values as respect, fairness, civility, honesty and responsibility. These values should be manifest not only in athletics participation, but also in the broad spectrum of activities affecting the athletics program. It is the responsibility of each institution to: *(Revised: 1/9/96)*

- (a) Establish policies for sportsmanship and ethical conduct in intercollegiate athletics consistent with the educational mission and goals of the institution; and *(Adopted: 1/9/96)*
- (b) Educate, on a continuing basis, all constituencies about the policies in Constitution 2.4-(a). *(Adopted: 1/9/96)*

2.5 THE PRINCIPLE OF SOUND ACADEMIC STANDARDS [*]

Intercollegiate athletics programs shall be maintained as a vital component of the educational program, and student-athletes shall be an integral part of the student body. The admission, academic standing and academic progress of student-athletes shall be consistent with the policies and standards adopted by the institution for the student body in general.

2.6 THE PRINCIPLE OF NONDISCRIMINATION [*]

The Association shall promote an atmosphere of respect for and sensitivity to the dignity of every person. It is the policy of the Association to refrain from discrimination with respect to its governance policies, educational programs, activities and employment policies, including on the basis of age, color, disability, gender, national origin, race, religion, creed or sexual orientation. It is the responsibility of each member institution to determine independently its own policy regarding nondiscrimination. *(Adopted: 1/16/93, Revised: 1/16/00)*

2.7 THE PRINCIPLE OF DIVERSITY WITHIN GOVERNANCE STRUCTURES [*]

The Association shall promote diversity of representation within its various divisional governance structures and substructures. Each divisional governing body must assure gender and ethnic diversity among the membership of the bodies in the division's administrative structure. *(Adopted: 1/9/96 effective 8/1/97)*

2.8 THE PRINCIPLE OF RULES COMPLIANCE [*]

2.8.1 Responsibility of Institution. [*] Each institution shall comply with all applicable rules and regulations of the Association in the conduct of its intercollegiate athletics programs. It shall monitor its programs to assure compliance and to identify and report to the Association instances in which compliance has not been achieved. In any such instance, the institution shall cooperate fully with the Association and shall take appropriate corrective actions. Members of an institution's staff, student-athletes, and other individuals and groups representing the institution's athletics interests shall comply with the applicable Association rules, and the member institution shall be responsible for such compliance.

2.8.2 Responsibility of Association. [*] The Association shall assist the institution in its efforts to achieve full compliance with all rules and regulations and shall afford the institution, its staff and student-athletes fair procedures in the consideration of an identified or alleged failure in compliance.

2.8.3 Penalty for Noncompliance. [*] An institution found to have violated the Association's rules shall be subject to such disciplinary and corrective actions as may be determined by the Association.

2.9 THE PRINCIPLE OF AMATEURISM [*]

Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.

2.10 THE PRINCIPLE OF COMPETITIVE EQUITY [*]

The structure and programs of the Association and the activities of its members shall promote opportunity for equity in competition to assure that individual student-athletes and institutions will not be prevented unfairly from achieving the benefits inherent in participation in intercollegiate athletics.

2.11 THE PRINCIPLE GOVERNING RECRUITING [*]

The recruiting process involves a balancing of the interests of prospective student-athletes, their educational institutions and the Association's member institutions. Recruiting regulations shall be designed to promote equity among member institutions in their recruiting of prospective student-athletes and to shield them from undue pressures that may interfere with the scholastic or athletics interests of the prospective student-athletes or their educational institutions.

2.12 THE PRINCIPLE GOVERNING ELIGIBILITY [*]

Eligibility requirements shall be designed to assure proper emphasis on educational objectives, to promote competitive equity among institutions and to prevent exploitation of student-athletes.

2.13 THE PRINCIPLE GOVERNING FINANCIAL AID [*]

A student-athlete may receive athletically related financial aid administered by the institution without violating the principle of amateurism, provided the amount does not exceed the cost of education authorized by the Association; however, such aid as defined by the Association shall not exceed the cost of attendance as published by each institution. Any other financial assistance, except that received from one upon whom the student-athlete is naturally or legally dependent, shall be prohibited unless specifically authorized by the Association.

2.14 THE PRINCIPLE GOVERNING PLAYING AND PRACTICE SEASONS [*]

The time required of student-athletes for participation in intercollegiate athletics shall be regulated to minimize interference with their opportunities for acquiring a quality education in a manner consistent with that afforded the general student body.

2.15 THE PRINCIPLE GOVERNING POSTSEASON COMPETITION AND CONTESTS SPONSORED BY NONCOLLEGIATE ORGANIZATIONS [*]

The conditions under which postseason competition occurs shall be controlled to assure that the benefits inherent in such competition flow fairly to all participants, to prevent unjustified intrusion on the time student-athletes devote to their academic programs, and to protect student-athletes from exploitation by professional and commercial enterprises.

2.16 THE PRINCIPLE GOVERNING THE ECONOMY OF ATHLETICS PROGRAM OPERATION [*]

Intercollegiate athletics programs shall be administered in keeping with prudent management and fiscal practices to assure the financial stability necessary for providing student-athletes with adequate opportunities for athletics competition as an integral part of a quality educational experience.

CONSTITUTION, ARTICLE 3

NCAA Membership

3.01	General Principles	7	3.3	Member Conference	13
3.02	Definitions and Applications	7	3.4	Affiliated Membership	14
3.1	Eligibility for Membership	8	3.7	Dues of Members	15
3.2	Active Membership	9			

3.01 GENERAL PRINCIPLES

3.01.1 Classes of Membership. Division I offers three classes of membership: active, conference and affiliated. Eligibility for and method of election to membership, obligations and conditions for continuing membership, voting rights and other membership privileges for each class are defined in this article. *(Revised: 1/11/94 effective 9/2/94, 1/15/11 effective 8/1/11)*

3.01.2 Division Membership. Active and conference members of the NCAA may be divided into divisions for purposes of legislation and competition in NCAA championships. Criteria for membership in these divisions are defined in Bylaw 20.

3.01.3 Obligation to Meet Division Criteria. Division membership criteria constitute enforceable legislation. Each member institution shall comply with all applicable criteria of its division, and an institution that fails to do so shall be subject to the enforcement procedures and to possible reclassification.

3.01.4 Termination or Suspension of Membership. All rights and privileges of a member shall cease immediately upon termination or suspension of its membership.

3.02 DEFINITIONS AND APPLICATIONS

3.02.1 Competitive Body. A competitive body is an athletics conference that conducts competition among its member institutions and determines a conference champion in one or more sports.

3.02.2 Legislative Body. A legislative body is an athletics conference that develops and maintains rules and regulations governing the athletics programs and activities of its member institutions.

3.02.3 Membership Categories.

3.02.3.1 Active Member. An active member is a four-year college or university that is accredited by the appropriate regional accrediting agency and duly elected to active membership under the provisions of this article (see Constitution 3.2.3). Active members have the right to compete in NCAA championships, to vote on legislation and other issues before the Association, and to enjoy other privileges of membership designated in the constitution and bylaws of the Association. *(Revised: 1/15/11 effective 8/1/11)*

3.02.3.1.1 Athletics Consortium. An athletics consortium consists of one member institution and neighboring member or nonmember institutions (but not more than one nonmember institution), recognized and approved by a two-thirds vote of the Administration Cabinet. The student-athletes of the combined institutions are permitted to compete on the NCAA member institution's athletics teams, provided they meet the eligibility requirements of the NCAA and the member institution (see Constitution 3.1.2). *(Revised: 11/1/07 effective 8/1/08)*

3.02.3.2 Member Conference. A member conference is a group of colleges and/or universities that conducts competition among its members and determines a conference champion in one or more sports (in which the NCAA conducts championships or for which it is responsible for providing playing rules for intercollegiate competition), duly elected to conference membership under the provisions of this article (see Constitution 3.3.3). A member conference is entitled to all of the privileges of active members except the right to compete in NCAA championships (see Constitution 3.3.2). Only those conferences that meet specific criteria as competitive and legislative bodies (see Constitution 3.02.1 and 3.02.2) and minimum standards related to size and division status are permitted to vote on legislation or other issues before the Association.

3.02.3.3 Affiliated Member. An affiliated member is a coaches or sports association whose function and purpose are directly related to one or more sports in which the NCAA conducts championships or an emerging sport for women, or an association that consists of college/university administrators and has a direct connection to either the NCAA or its member institutions, duly elected to affiliated membership under the provisions of this article (see Constitution 3.4.3). An affiliated member is entitled to be represented by one nonvoting delegate at

3.2.6 Discipline of Active Members. Disciplinary or corrective actions other than suspension or termination of membership may be effected during the period between annual Conventions for violation of NCAA rules. (See Bylaws 19 and 32 for enforcement regulations, policies and procedures.)

3.2.6.1 Restoration of Good Standing. Disciplined members shall resume good standing in accordance with the terms of the disciplinary action taken, or may be restored to good standing at any time by a majority vote of the members of the Committee on Infractions present and voting. If fewer than eight members are present, any committee action requires a favorable vote of at least four committee members. Disciplined members also may be restored to good standing at the annual Convention, by vote of a majority of the members present and voting.

3.3 MEMBER CONFERENCE

3.3.1 Eligibility.

3.3.1.1 Competitive and Legislative Body. A member conference shall be both a competitive and a legislative body on the conference level (see Constitution 3.02.1 and 3.02.2). *(Revised: 1/15/11 effective 8/1/11)*

3.3.1.2 Conference Competition Requirement. Conference membership is available to duly elected athletics conferences of colleges and universities that conduct conference competition and determine a champion in one or more sports in which the Association conducts championships or for which it is responsible for providing playing rules for intercollegiate competition.

3.3.1.3 Composition of Conference. All of the members of the conference shall be active members of Division I or be engaged in the reclassification process pursuant to Bylaw 20.5. *(Revised: 1/11/94 effective 9/2/94, 1/15/11 effective 8/1/11)*

3.3.2 Privileges.

3.3.2.1 Privileges of Member Conferences. Member conferences shall be entitled to all of the privileges of active members except the right to compete as such in NCAA championships. A copy of NCAA Champion magazine shall be sent to each member of the NCAA.

3.3.2.2 Voting Rights. Only those member conferences that meet the criteria of Bylaw 20.02.5 shall be permitted to vote on issues before the Association. *(Revised: 1/15/11 effective 8/1/11)*

3.3.2.2.1 Football Issues. Conference championship competition shall be conducted in football in order for the conference to vote on issues pertaining only to football. *(Revised: 1/15/11 effective 8/1/11)*

3.3.2.3 Use of Association's Registered Marks. Member conferences may use the registered marks of the Association (the Association's name, logo or other insignia) only in accordance with guidelines established by the Executive Committee.

3.3.3 Election Procedures.

3.3.3.1 Application. An athletics conference desiring to become a member conference shall make application on a form available from the national office by June 1 for membership effective August 1 of the following academic year. A check in the appropriate amount for annual dues (see Constitution 3.7.2) shall accompany the application. Should the applicant fail election, the dues paid shall be refunded. *(Revised: 4/25/02, 1/15/11 effective 8/1/11)*

3.3.3.2 Election. Athletics conferences may be elected as member conferences by a majority vote of the delegates present and voting at an annual Convention or by a majority vote of the Board of Directors, effective the following August 1. *(Revised: 4/25/02, 11/1/07 effective 8/1/08, 10/28/10, 1/15/11 effective 8/1/11)*

3.3.4 Conditions and Obligations of Membership.

3.3.4.1 General. The member conferences of this Association agree to administer their athletics programs in accordance with the constitution, bylaws and other legislation of the Association.

3.3.4.2 Athletics Certification Program. Member conferences shall facilitate the athletics certification program of the Association in accordance with the Association's constitution and bylaws. *(Adopted: 1/16/93 effective 1/1/94)*

3.3.4.3 Conference Competition. Member conferences shall conduct conference competition and determine a champion in one or more sports in which the Association conducts championships or for which it is responsible for providing playing rules for intercollegiate competition.

3.3.4.4 Officiating. A multisport conference shall provide oversight of the officiating programs for selecting, training and assigning officials for its men's and women's basketball programs. *(Adopted: 1/15/11 effective 8/1/11)*

3.3.4.5 Compliance Program. A multisport conference shall have a comprehensive compliance program. *(Adopted: 1/15/11 effective 8/1/11)*

3.3.4.6 Conference Student-Athlete Advisory Committee. Each conference shall establish a student-athlete advisory committee for its member institutions' student-athletes. The composition and duties of the committee shall be determined by the conference. *(Adopted: 10/27/98 effective 8/1/99)*

CONSTITUTION, ARTICLE 4

Organization

4.01	General Principles	17	4.5	Division I Leadership Council	22
4.02	Definitions and Applications	18	4.6	Division I Legislative Council	23
4.1	Executive Committee	20	4.9	Committees/Cabinets	25
4.2	Division I Board of Directors	21			

4.01 GENERAL PRINCIPLES

4.01.1 Structure. [*] The Association's administrative structure shall include an Executive Committee comprised of institutional presidents or chancellors that oversees Association-wide issues and shall ensure that each division operates consistent with the basic purposes, fundamental policies and general principles of the Association (see Constitution 1 and 2). In addition, the administrative structure of each division shall empower a body of institutional presidents or chancellors to set forth the policies, rules and regulations for operating the division. Further, the administrative structure of each division shall empower a body of athletics administrators and faculty athletics representatives (and in Division III, institutional presidents and chancellors) to make recommendations to the division's body of institutional presidents or chancellors and to handle responsibilities delegated to it. (*Adopted: 1/9/96 effective 8/1/97, Revised: 3/8/06*)

4.01.2 Guarantees. [*] The Association's overall governance structure guarantees its members the following: (*Adopted: 1/9/96 effective 8/1/97*)

4.01.2.1 Budget Allocations. [*] Members are guaranteed revenue through allocations made to each division from the Association's general operating revenue. Division II shall receive at least 4.37 percent of the Association's annual general operating revenue. Division III shall receive at least 3.18 percent of the Association's annual general operating revenue. (*Adopted: 1/9/96 effective 8/1/97*)

4.01.2.1.1 General Operating Revenue. [*] General operating revenue, as used in this section, shall include at least all sources of revenue existing as of January 9, 1996, including revenue from contracts for these existing sources and revenue from any modified, extended or successor contract for such sources. (*Adopted: 1/9/96 effective 8/1/97*)

4.01.2.2 Revenue Guarantee. [♦] All members shall receive revenue from all gross revenue sources received by the Association, unless specifically excluded, through the division's revenue distribution formulas. (*Adopted: 1/9/96 effective 8/1/97*)

4.01.2.2.1 Revenue from New Subdivision Championship. [♦] This provision shall not apply to the distribution of revenue produced directly by a new subdivisional championship in a sport that has a subdivisional championship at the time of the adoption of this legislation. Any revenue produced by such a new subdivisional championship shall be distributed as determined by that subdivision. (*Adopted: 1/9/96 effective 8/1/97*)

4.01.2.2.2 Revenue Distribution Formula. [♦] As used in this section, the components of the division's revenue distribution formulas as they existed at the time of the adoption of this legislation include the Academic Enhancement, Basketball, Conference Grant, Grant-in-Aid, Special Assistance, and Sports Sponsorship funds, and the supplemental and reserve funds intended for distribution to the membership. (*Adopted: 1/9/96 effective 8/1/97*)

4.01.2.2.2.1 Proportion of Revenue. [♦] The revenue distributed through these funds shall be allocated among the funds in the same proportion as existed in the fiscal year 2001-02. (*Adopted: 1/9/96 effective 8/1/97, Revised: 1/14/97*)

4.01.2.2.2.2 Formula for Allocation. [♦] The formula for allocating each such fund among the members shall be as it existed at the time of the adoption of this legislation. (*Adopted: 1/9/96 effective 8/1/97*)

4.01.2.2.2.3 Waiver of Proportionality Requirement. The Board of Directors may waive the proportionality requirements of the revenue guarantee to permit uniform increases to all programs in the Academic Enhancement, Conference Grant and Special Assistance funds. (*Adopted: 1/14/97 effective 8/1/97*)

4.01.2.2.3 Joint Ventures. All marketing joint ventures, involving sports (other than bowl subdivision football) in which the NCAA sponsored a championship as of January 15, 1997, between the Association (or the Association's representative or agent) and a member conference or member institution (or the rep-

4.02.6.2.2 Leadership Council and Legislative Council. The term of office for the Leadership Council and Legislative Council shall be as follows: *(Adopted: 11/1/07 effective 8/1/08)*

- (a) Members shall serve a four-year term. Members are not eligible for immediate re-appointment;
- (b) A conference may remove its representative during a term;
- (c) The terms of office of Football Bowl Subdivision positions and Football Championship Subdivision and Division I Subdivision positions shall expire on a staggered basis to provide for continuity. Members may be appointed for less than full terms; and
- (d) Members who serve more than one-half of a term shall be considered to have served a full term.

4.02.6.3 Institution's Membership in Different Subdivision. An institution's representative to the Board of Directors, Leadership Council and Legislative Council is eligible to serve on behalf of the multisport conference in which the institution holds membership, even if the institution's NCAA membership is in a different subdivision. *(Adopted: 11/1/07 effective 8/1/08)*

4.1 EXECUTIVE COMMITTEE [*]

4.1.1 Composition. [*] The Executive Committee shall consist of 20 members. The NCAA president and the chairs of the Division I Leadership Council and the Division II and Division III Management Councils shall be ex officio nonvoting members, except that the NCAA president is permitted to vote in the case of a tie among the voting members of the Executive Committee present and voting. The other 16 voting members of the Executive Committee shall include: *(Adopted: 1/9/96 effective 8/1/97, Revised: 3/8/06, 11/1/07 effective 8/1/08)*

- (a) Eight chancellors or presidents from the Division I Board of Directors from Football Bowl Subdivision institutions; *(Revised: 3/8/06, 12/15/06)*
- (b) Two chancellors or presidents from the Division I Board of Directors from Football Championship Subdivision institutions; *(Revised: 3/8/06, 12/15/06)*
- (c) Two chancellors or presidents from the Division I Board of Directors from Division I Subdivision institutions; *(Revised: 3/8/06, 12/15/06)*
- (d) Two Division II chancellors or presidents from the Division II Presidents Council; and *(Revised: 3/8/06)*
- (e) Two Division III chancellors or presidents from the Division III Presidents Council. *(Revised: 3/8/06)*

4.1.2 Duties and Responsibilities. [*] The Executive Committee shall: *(Adopted: 1/9/96 effective 8/1/97)*

- (a) Provide final approval and oversight of the Association's budget;
- (b) Employ the NCAA president, who shall be administratively responsible to the Executive Committee and who shall be authorized to employ such other persons as may be necessary to conduct efficiently the business of the Association; *(Revised: 3/8/06)*
- (c) Provide strategic planning for the Association as a whole;
- (d) Identify core issues that affect the Association as a whole;
- (e) Act on behalf of the Association by adopting and implementing policies to resolve core issues and other Association-wide matters; *(Revised: 1/12/08)*
- (f) Initiate and settle litigation;
- (g) Convene at least one combined meeting per year of the three divisional presidential governing bodies;
- (h) Convene at least one same-site meeting per year of the Division I Legislative Council and the Division II and Division III Management Councils;
- (i) Forward proposed amendments to Constitution 1 and 2 and other dominant legislation to the entire membership for a vote;
- (j) Call for a vote of the entire membership on the action of any division that it determines to be contrary to the basic purposes, fundamental policies and general principles set forth in the Association's constitution. This action may be overridden by the Association's entire membership by a two-thirds majority vote of those institutions voting;
- (k) Call for an annual or special Convention of the Association;
- (l) Review and coordinate the catastrophic-injury and professional career insurance (disabling injury/illness) programs; and *(Adopted: 8/5/99)*
- (m) Compile the names of those individuals associated with intercollegiate athletics who died during the year immediately preceding the annual Convention. *(Adopted: 11/1/01)*

4.1.3 Election/Term of Office. [*]

4.1.3.1 Election. [*] Division I members of the Executive Committee shall be appointed by the Division I Board of Directors. Divisions II and III members of the Executive Committee shall be appointed by the Divisions II and III Presidents Councils, respectively. *(Adopted: 1/9/96 effective 8/1/97)*

4.1.3.2 Terms. [*] The terms of service of members of the Executive Committee shall coincide with their service on the applicable divisional presidential governing body, unless otherwise specified by that governing body. *(Adopted: 1/9/96 effective 8/1/97)*

4.1.3.3 Committee Chair. [*] The Executive Committee shall elect one of its members to serve for a two-year period as chair. *(Adopted: 1/9/96 effective 8/1/97)*

4.2 DIVISION I BOARD OF DIRECTORS

4.2.1 Composition. Giving due weight to gender and ethnic diversity per Constitution 4.02.5, the Board of Directors shall include 18 members and shall be comprised of presidents or chancellors. The members of the Board shall include: *(Adopted: 1/9/96 effective 8/1/97, Revised: 1/14/97 effective 8/1/97, 8/5/99, 11/1/07 effective 8/1/08)*

- (a) One institutional president or chancellor from each of the following 11 conferences: *(Revised: 8/5/99, 4/24/03)*
 - (1) Atlantic Coast Conference;
 - (2) Big East Conference;
 - (3) Big Ten Conference;
 - (4) Big 12 Conference;
 - (5) Conference USA;
 - (6) Mid-American Conference;
 - (7) Mountain West Conference;
 - (8) Pacific-12 Conference;
 - (9) Southeastern Conference;
 - (10) Sun Belt Conference; and
 - (11) Western Athletic Conference.
- (b) Seven institutional presidents or chancellors from among the following conferences: *(Revised: 1/14/97, 8/5/99, 4/24/03)*
 - (1) America East Conference;
 - (2) Atlantic Sun Conference;
 - (3) Atlantic 10 Conference;
 - (4) Big Sky Conference;
 - (5) Big South Conference;
 - (6) Big West Conference;
 - (7) Colonial Athletic Association;
 - (8) Horizon League;
 - (9) Ivy Group;
 - (10) Metro Atlantic Athletic Conference;
 - (11) Mid-Eastern Athletic Conference;
 - (12) Missouri Valley Conference;
 - (13) Northeast Conference;
 - (14) Ohio Valley Conference;
 - (15) Patriot League;
 - (16) Southern Conference;
 - (17) Southland Conference;
 - (18) Southwestern Athletic Conference;
 - (19) The Summit League; or
 - (20) West Coast Conference.

4.2.1.1 Conference Representation. No conference listed in Constitution 4.2.1-(b) may have more than one conference representative serving on the Board of Directors simultaneously. *(Adopted: 1/9/96 effective 8/1/97, Revised: 8/5/99, 12/15/06)*

4.2.1.2 Increase or Decrease. The number of Board members from each category set forth in Constitution 4.2.1-(a) and 4.2.1-(b) shall remain the same regardless of an increase or decrease in the number of voting member conferences. *(Adopted: 1/9/96 effective 8/1/97, Revised: 8/5/99)*

4.2.1.3 Rotation of Representatives. The rotation of Board of Directors conference representatives between the conferences listed in Constitution 4.2.1-(b), shall be developed, maintained and revised by those conferences. *(Adopted: 1/14/97 effective 8/1/97, Revised: 12/15/06)*

4.2.2 Duties and Responsibilities. The Board of Directors shall: (*Adopted: 1/9/96 effective 8/1/97, Revised: 8/7/03*)

- (a) Establish and direct general policy;
- (b) Establish a strategic plan;
- (c) Adopt or defeat legislative proposals independent of the Legislative Council (e.g., emergency, noncontroversial or other proposals sponsored by the Board); (*Revised: 11/1/07 effective 8/1/08*)
- (d) At its discretion, ratify, amend or defeat legislation adopted by the Legislative Council (see Constitution 5.3.2); (*Revised: 11/1/07 effective 8/1/08*)
- (e) Delegate to the Leadership Council or Legislative Council responsibilities for specific matters it deems appropriate; (*Revised: 11/1/07 effective 8/1/08*)
- (f) Appoint members of the NCAA Division I Committee on Infractions and the Division I Infractions Appeals Committee; (*Adopted: 11/1/07 effective 8/1/08*)
- (g) Review and approve policies and procedures governing the enforcement program; (*Adopted: 11/1/07 effective 8/1/08*)
- (h) Ratify, amend or rescind the actions of the Leadership Council or Legislative Council; (*Revised: 11/1/07 effective 8/1/08*)
- (i) Assure that there is gender and ethnic diversity among its membership and the membership of each of the other bodies in the administrative structure; (*Revised: 11/1/07 effective 8/1/08*)
- (j) Require bodies in the administrative structure to alter (but not expand) their membership to achieve diversity;
- (k) Approve an annual budget;
- (l) Approve regulations providing for the expenditure of funds and the distribution of income consistent with the provisions of Constitution 4.01.2.2;
- (m) Approve regulations providing for the administration of championships;
- (n) Advise the Executive Committee concerning the employment of the NCAA president and concerning the oversight of his or her employment; (*Revised: 3/8/06*)
- (o) Be responsible for the administration, compilation and disclosure of information concerning the Academic Progress Rate (APR) and Academic Performance Census (APC); and (*Adopted: 8/7/03 effective 8/1/04*)
- (p) Elect institutions to active Division I membership. (*Adopted: 10/28/10*)

4.2.3 Voting Method. The method of voting on issues considered by the Board of Directors shall be by roll call, except for those actions taken by the unanimous consent of the Board members present and voting. Roll-call vote results shall be reported to the membership. (*Adopted: 1/9/96 effective 8/1/97*)

4.5 DIVISION I LEADERSHIP COUNCIL

4.5.1 Composition. Giving due weight to gender and ethnic diversity per Constitution 4.02.5, the Leadership Council shall include 31 members and shall be comprised of athletics administrators (e.g., athletics directors, senior woman administrators, assistant athletics directors, conference administrators), faculty athletics representatives and institutional administrators to whom athletics departments report or who have other significant duties regarding athletics. The members of the Leadership Council shall include: (*Adopted: 11/1/07 effective 8/1/08*)

- (a) One administrator or representative (who shall have three votes) from each of the following seven conferences:
 - (1) Atlantic Coast Conference;
 - (2) Big East Conference;
 - (3) Big Ten Conference;
 - (4) Big 12 Conference;
 - (5) Conference USA;
 - (6) Pacific-12 Conference; and
 - (7) Southeastern Conference.
- (b) One administrator or representative (who shall have 1.5 votes) from each of the following four conferences:
 - (1) Mid-American Conference;
 - (2) Mountain West Conference;
 - (3) Sun Belt Conference; and
 - (4) Western Athletic Conference.
- (c) One administrator or representative (who shall have 1.2 votes) from each of the following conferences:
 - (1) America East Conference;
 - (2) Atlantic Sun Conference;
 - (3) Atlantic 10 Conference;
 - (4) Big Sky Conference;

CONSTITUTION, ARTICLE 5

Legislative Authority and Process

5.01	General Principles	29	5.3	Amendment Process	33
5.02	Definitions and Applications	29	5.4	Other Legislative and Amendment Procedures	39
5.1	Conventions and Meetings	29			
5.2	Elements of Legislation	32			

5.01 GENERAL PRINCIPLES [*]

5.01.1 Basis of Legislation. [*] All legislation of the Association that governs the conduct of the intercollegiate athletics programs of its member institutions shall be adopted by the membership in Convention assembled, or by the divisional governance structures as set forth in Constitution 4, as determined by the constitution and bylaws governing each division, and shall be consistent with the purposes and fundamental policy set forth in Constitution 1, and shall be designed to advance one or more principles such as those set forth in Constitution 2. *(Revised: 1/9/96 effective 8/1/97)*

5.01.2 Approaches to Legislative Process. [*] The membership of the Association recognizes that certain fundamental policies, practices and principles have applicability to all members, while others are applicable to division groupings of members, based on a common philosophy shared among the individual members of the division and on special policies and concerns that are common to the nature and purposes of the institutions in the division. *(Revised: 1/9/96 effective 8/1/97)*

5.02 DEFINITIONS AND APPLICATIONS

5.02.1 Legislative (Constitution and Bylaw) Provisions.

5.02.1.1 Dominant. [*] A dominant provision is a regulation that applies to all members of the Association and is of sufficient importance to the entire membership that it requires a two-thirds majority vote of all delegates present and voting in joint session at an annual or special Convention. Dominant provisions are identified by an asterisk (*).

5.02.1.2 Division Dominant. [*] A division dominant provision is a regulation that applies to all members of a division and is of sufficient importance to the division that it requires a two-thirds majority vote of all delegates present and voting at a division's annual or special Convention. Division dominant provisions are identified by the diamond symbol (◆). *(Revised: 1/9/96 effective 8/1/97)*

5.02.1.3 Common. [*] A common provision is a regulation that applies to more than one of the divisions of the Association. A common provision shall be adopted by each of the applicable divisions, acting separately pursuant to the divisional legislative process described in Constitution 5.3, and must be approved by all applicable divisions to be effective. Common provisions are identified by the pound sign (#). *(Adopted: 1/14/97 effective 8/1/97)*

5.02.1.4 Federated. [*] A federated provision is a regulation adopted by a majority vote of the delegates present and voting of one or more of the divisions or subdivisions of the Association, acting separately pursuant to the divisional legislative process described in Constitution 5.3. Such a provision applies only to the division(s) or subdivision(s) that adopts it. *(Revised: 1/9/96 effective 8/1/97)*

5.02.1.5 Football Championship Subdivision Dominant. [FCSD] A Football Championship Subdivision dominant provision is a regulation that applies only to the Football Championship Subdivision and is of sufficient importance to the subdivision that it requires a two-thirds majority vote for adoption or to be amended pursuant to the legislative process set forth in Constitution 5.3. Football Championship Subdivision dominant provisions are identified by the initialization FCSD. *(Adopted: 1/15/11)*

5.1 CONVENTIONS AND MEETINGS

5.1.1 Authorization.

5.1.1.1 Annual Convention. [*] There shall be an annual Convention of this Association during the second week of January or at such other time as may be prescribed by the Executive Committee.

5.4 OTHER LEGISLATIVE AND AMENDMENT PROCEDURES

5.4.1 Interpretations of Constitution and Bylaws.

5.4.1.1 Authorization. The Board of Directors and the Legislative Council, and the Legislative Review/Interpretations Committee in the interim between meetings of the Board of Directors and Legislative Council, are empowered to make interpretations of the constitution and bylaws (see Constitution 5.2.5). *(Revised: 1/9/96 effective 8/1/97, 11/1/07 effective 8/1/08)*

5.4.1.1.1 Modification of Wording. In addition to its general authority to make binding interpretations of NCAA legislation, the Legislative Council, by a two-thirds majority of its members present and voting, may interpret legislation consistent with the intent of the membership in adopting the legislation if sufficient documentation and testimony are available to establish clearly that the wording of the legislation is inconsistent with that intent. The Legislative Council shall initiate the legislative process to confirm any such interpretations. *(Revised: 1/9/96 effective 8/1/97, 11/1/07 effective 8/1/08)*

5.4.1.2 Interpretation Process.

5.4.1.2.1 Staff Interpretation (Determination). The academic and membership affairs staff shall respond to a request from a member institution for an interpretation of NCAA rules. *(Revised: 1/14/97 effective 8/1/97, 8/5/04, 4/24/08)*

5.4.1.2.1.1 Appeal of Staff Interpretation. An institution may appeal a staff interpretation to the Legislative Review/Interpretations Committee. Such a request must be submitted in writing by the institution's conference or by one of the five individuals who are authorized to request interpretations on behalf of the institution (president or chancellor, faculty athletics representative, athletics director, senior woman administrator, senior compliance administrator, or a designated substitute for the president or chancellor and/or athletics director, as specified in writing to the national office). *(Revised: 1/10/91, 1/11/94, 1/14/97 effective 8/1/97, 8/5/04, 3/8/06, 4/24/08)*

5.4.1.2.1.1.1 Institutional Participation. An institution may participate by teleconference in the appeal of an interpretation if the activity at issue already has occurred and the interpretative decision could result in an individual or institutional violation. The Legislative Review/Interpretations Committee shall establish policies and procedures relating to an institution's participation. *(Adopted: 4/25/02, Revised: 8/5/04, 4/24/08)*

5.4.1.2.1.2 Review of Staff Interpretations. The Legislative Review/Interpretations Committee shall review all staff interpretations. *(Adopted: 4/24/08)*

5.4.1.2.1.3 Publication and Notification. A staff interpretation shall be binding on the requesting institution on notification of the response to its interpretation request, unless the interpretation is modified or reversed on appeal or review by the Legislative Review/Interpretations Committee. A staff interpretation that has been reviewed and approved by the Legislative Review/Interpretations Committee shall be binding on all other institutions on publication to the membership (e.g., announced on the NCAA website or Legislative Services Database for the Internet). *(Adopted: 4/24/08)*

5.4.1.2.2 Review of Legislative Review/Interpretations Committee's Decision. The Legislative Council shall review all interpretations issued by the Legislative Review/Interpretations Committee and may approve, reverse or modify such interpretations. A member institution may appeal a decision of the Legislative Review/Interpretations Committee to the Legislative Council. The appeal must be submitted in writing by the institution's president or chancellor, faculty athletics representative or director of athletics. The Legislative Council shall establish the procedures for such an appeal. A decision of the Legislative Council is final and no additional appeal opportunity shall exist for a member institution. *(Adopted: 1/11/94, Revised: 1/9/96 effective 8/1/97, 1/14/97 effective 8/1/97, 8/5/04, 3/8/06, 11/1/07 effective 8/1/08, 10/28/10)*

5.4.1.2.3 Publication and Notification. Interpretations issued by the Legislative Review/Interpretations Committee shall be binding on notification to affected institutions and on all member institutions after publication and notification to the membership. *(Revised: 1/9/96 effective 8/1/97, 1/14/97 effective 8/1/97, 8/5/04)*

5.4.1.2.4 Revision. Interpretations approved by the Legislative Council may not be revised by the Legislative Review/Interpretations Committee. The Legislative Review/Interpretations Committee may only recommend to the Legislative Council revisions of such interpretations. *(Revised: 1/9/96 effective 8/1/97, 1/14/97 effective 8/1/97, 8/5/04, 11/1/07 effective 8/1/08)*

5.4.1.3 Subcommittee for Legislative Relief of the Legislative Council. An institution may appeal a decision of the NCAA staff regarding the application of NCAA legislation to a particular situation to the subcommittee when no other entity has the authority to act. In reaching its decision, the subcommittee shall review the complete record in order to determine whether there is sufficient basis to grant relief from the application of the legislation. The Legislative Council shall establish the process for such a review, shall monitor the actions taken under this authorization, and shall report annually to the membership the actions taken, in summary, aggregate form. *(Adopted: 1/16/93, Revised: 1/9/96 effective 8/1/97, 11/1/00, 11/1/07 effective 8/1/08)*

Institutional Control

6.01	General Principle	43	6.3	Self-Study and Evaluation	44
6.1	Institutional Governance	43	6.4	Responsibility for Actions of Outside Entities	44
6.2	Budgetary Control	44			

6.01 GENERAL PRINCIPLE

6.01.1 Institutional Control. The control and responsibility for the conduct of intercollegiate athletics shall be exercised by the institution itself and by the conference(s), if any, of which it is a member. Administrative control or faculty control, or a combination of the two, shall constitute institutional control.

6.1 INSTITUTIONAL GOVERNANCE

6.1.1 President or Chancellor. A member institution's president or chancellor has ultimate responsibility and final authority for the conduct of the intercollegiate athletics program and the actions of any board in control of that program. *(Revised: 3/8/06)*

6.1.2 Athletics Board. A board in control of athletics or an athletics advisory board, which has responsibility for advising or establishing athletics policies and making policy decisions, is not required. However, if such a board exists, it must conform to the following provisions.

6.1.2.1 Composition. Administration and/or faculty staff members shall constitute at least a majority of the board in control of athletics or an athletics advisory board, irrespective of the president or chancellor's responsibility and authority or whether the athletics department is financed in whole or in part by student fees. If the board has a parliamentary requirement necessitating more than a simple majority in order to transact some or all of its business, then the administrative and faculty members shall be of sufficient number to constitute at least that majority. *(Revised: 3/8/06)*

6.1.2.1.1 Administrator Defined. An administrator (for purposes of this legislation) is an individual employed by the institution as a full-time administrative staff member who holds an academic appointment, is directly responsible to the institution's president or chancellor or serves as a chief administrative official (e.g., admissions director, finance officer, department head, or athletics department head). Other nonacademic staff members and individuals who are members of an institution's board of trustees or similar governing body would not be considered to be administrators for purposes of this regulation. *(Revised: 3/8/06)*

6.1.2.1.2 Board Subcommittee. If a board subcommittee is appointed, it is not necessary for the subcommittee to have majority control by administration and/or faculty members (see Constitution 6.1.2.1), provided all actions of the subcommittee are approved by the entire board before becoming effective. However, if the subcommittee's actions are effective permanently or become effective immediately and remain in effect until reviewed by the entire board at a later date, the subcommittee's membership must satisfy the majority-control requirement.

6.1.2.1.3 Attendance. A parliamentary majority of administrators and faculty members of a board in control of athletics is not required to be present at any single meeting in order to conduct business.

6.1.2.2 Chair or Voting Delegate. Only an administrator or faculty member (as opposed to a student, alumnus or governing board member) may serve as chair of a member institution's board in control of intercollegiate athletics or represent the board as the institution's voting delegate at Conventions. Institutional representatives in these positions have responsibility for advising or establishing athletics policies and making policy decisions that require administrative and/or faculty control.

6.1.3 Faculty Athletics Representative. A member institution shall designate an individual to serve as faculty athletics representative. An individual so designated after January 12, 1989, shall be a member of the institution's faculty or an administrator who holds faculty rank and shall not hold an administrative or coaching position in the athletics department. Duties of the faculty athletics representative shall be determined by the member institution. *(Adopted: 1/11/89)*

6.1.4 Student-Athlete Advisory Committee. Each institution shall establish a student-athlete advisory committee for its student-athletes. The composition and duties of the committee shall be determined by the institution. *(Adopted: 1/10/95 effective 8/1/95)*

6.2 BUDGETARY CONTROL

6.2.1 Normal Budgeting Procedures. The institution's annual budget for its intercollegiate athletics programs shall be controlled by the institution and subject to its normal budgeting procedures.

6.2.2 President or Chancellor Approval. The institution's president or chancellor or an institutional administrator designated by the president or chancellor from outside the athletics department shall approve the annual budget in the event that the institution's normal budgeting procedures do not require such action. *(Revised: 3/8/06)*

6.3 SELF-STUDY AND EVALUATION

6.3.1 Self-Study Report. Member institutions shall conduct a comprehensive self-study and evaluation of their intercollegiate athletics programs at least once every 10 years pursuant to the athletics certification process (see Bylaws 22 and 33). (Note: Between April 28, 2011, and August 1, 2013, no active Division I institution shall begin the athletics certification process.) *(Revised: 1/14/97 effective 8/1/97, 5/30/07, 4/28/11)*

6.3.2 Exit Interviews. The institution's director of athletics, senior woman administrator or designated representatives (excluding coaching staff members) shall conduct exit interviews in each sport with a sample of student-athletes (as determined by the institution) whose eligibility has expired. Interviews shall include questions regarding the value of the students' athletics experiences, the extent of the athletics time demands encountered by the student-athletes, proposed changes in intercollegiate athletics and concerns related to the administration of the student-athletes' specific sports. *(Adopted: 1/10/91 effective 8/1/91)*

6.4 RESPONSIBILITY FOR ACTIONS OF OUTSIDE ENTITIES

6.4.1 Independent Agencies or Organizations. An institution's "responsibility" for the conduct of its intercollegiate athletics program shall include responsibility for the acts of an independent agency, corporate entity (e.g., apparel or equipment manufacturer) or other organization when a member of the institution's executive or athletics administration, or an athletics department staff member, has knowledge that such agency, corporate entity or other organization is promoting the institution's intercollegiate athletics program. *(Revised: 2/16/00)*

6.4.2 Representatives of Athletics Interests. An institution's "responsibility" for the conduct of its intercollegiate athletics program shall include responsibility for the acts of individuals, a corporate entity (e.g., apparel or equipment manufacturer) or other organization when a member of the institution's executive or athletics administration or an athletics department staff member has knowledge or should have knowledge that such an individual, corporate entity or other organization: *(Revised: 2/16/00)*

- (a) Has participated in or is a member of an agency or organization as described in Constitution 6.4.1;
- (b) Has made financial contributions to the athletics department or to an athletics booster organization of that institution;
- (c) Has been requested by the athletics department staff to assist in the recruitment of prospective student-athletes or is assisting in the recruitment of prospective student-athletes;
- (d) Has assisted or is assisting in providing benefits to enrolled student-athletes; or
- (e) Is otherwise involved in promoting the institution's athletics program.

6.4.2.1 Agreement to Provide Benefit or Privilege. Any agreement between an institution (or any organization that promotes, assists or augments in any way the athletics interests of the member institution, including those identified per Constitution 6.4.1) and an individual who, for any consideration, is or may be entitled under the terms of the agreement to any benefit or privilege relating to the institution's athletics program, shall contain a specific clause providing that any such benefit or privilege may be withheld if the individual has engaged in conduct that is determined to be a violation of NCAA legislation. The clause shall provide for the withholding of the benefit or privilege from a party to the agreement and any other person who may be entitled to a benefit or privilege under the terms of the agreement. *(Adopted: 1/10/95)*

6.4.2.2 Retention of Identity as "Representative." Any individual participating in the activities set forth in Constitution 6.4.2 shall be considered a "representative of the institution's athletics interests," and once so identified as a representative, it is presumed the person retains that identity.

Ethical Conduct

10.01	General Principle	45	10.2	Knowledge of Use of Banned Drugs	46
10.02	Definitions and Applications	45	10.3	Sports Wagering Activities	46
10.1	Unethical Conduct	45	10.4	Disciplinary Action	46

10.01 GENERAL PRINCIPLE

10.01.1 Honesty and Sportsmanship. Individuals employed by (or associated with) a member institution to administer, conduct or coach intercollegiate athletics and all participating student-athletes shall act with honesty and sportsmanship at all times so that intercollegiate athletics as a whole, their institutions and they, as individuals, shall represent the honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports.

10.02 DEFINITIONS AND APPLICATIONS

10.02.1 Sports Wagering. [#] Sports wagering includes placing, accepting or soliciting a wager (on a staff member's or student-athlete's own behalf or on the behalf of others) of any type with any individual or organization on any intercollegiate, amateur or professional team or contest. Examples of sports wagering include, but are not limited to, the use of a bookmaker or parlay card; Internet sports wagering; auctions in which bids are placed on teams, individuals or contests; and pools or fantasy leagues in which an entry fee is required and there is an opportunity to win a prize. *(Adopted: 4/26/07 effective 8/1/07)*

10.02.2 Wager. [#] A wager is any agreement in which an individual or entity agrees to give up an item of value (e.g., cash, shirt, dinner) in exchange for the possibility of gaining another item of value. *(Adopted: 4/26/07 effective 8/1/07)*

10.1 UNETHICAL CONDUCT

Unethical conduct by a prospective or enrolled student-athlete or a current or former institutional staff member, which includes any individual who performs work for the institution or the athletics department even if he or she does not receive compensation for such work, may include, but is not limited to, the following: *(Revised: 1/10/90, 1/9/96, 2/22/01, 10/5/10)*

- Refusal to furnish information relevant to an investigation of a possible violation of an NCAA regulation when requested to do so by the NCAA or the individual's institution;
- Knowing involvement in arranging for fraudulent academic credit or false transcripts for a prospective or an enrolled student-athlete;
- Knowing involvement in offering or providing a prospective or an enrolled student-athlete an improper inducement or extra benefit or improper financial aid; *(Revised: 1/9/96)*
- Knowingly furnishing or knowingly influencing others to furnish the NCAA or the individual's institution false or misleading information concerning an individual's involvement in or knowledge of matters relevant to a possible violation of an NCAA regulation; *(Revised: 1/16/10)*
- Receipt of benefits by an institutional staff member for facilitating or arranging a meeting between a student-athlete and an agent, financial advisor or a representative of an agent or advisor (e.g., "runner"); *(Adopted: 1/9/96, Revised: 8/4/05)*
- Knowing involvement in providing a banned substance or impermissible supplement to student-athletes, or knowingly providing medications to student-athletes contrary to medical licensure, commonly accepted standards of care in sports medicine practice, or state and federal law. This provision shall not apply to banned substances for which the student-athlete has received a medical exception per Bylaw 31.2.3.5; however, the substance must be provided in accordance with medical licensure, commonly accepted standards of care and state or federal law; *(Adopted: 8/4/05, Revised: 5/6/08)*
- Failure to provide complete and accurate information to the NCAA, the NCAA Eligibility Center or an institution's admissions office regarding an individual's academic record (e.g., schools attended, completion of coursework, grades and test scores); *(Adopted: 4/27/06, Revised: 10/23/07)*
- Fraudulence or misconduct in connection with entrance or placement examinations; *(Adopted: 4/27/06)*

- (i) Engaging in any athletics competition under an assumed name or with intent to otherwise deceive; or *(Adopted: 4/27/06)*
- (j) Failure to provide complete and accurate information to the NCAA, the NCAA Eligibility Center or the institution's athletics department regarding an individual's amateur status. *(Adopted: 1/8/07, Revised: 5/9/07)*

10.2 KNOWLEDGE OF USE OF BANNED DRUGS

A member institution's athletics department staff members or others employed by the intercollegiate athletics program who have knowledge of a student-athlete's use at any time of a substance on the list of banned drugs, as set forth in Bylaw 31.2.3.4, shall follow institutional procedures dealing with drug abuse or shall be subject to disciplinary or corrective action as set forth in Bylaw 19.5.2.2.

10.3 SPORTS WAGERING ACTIVITIES [#]

The following individuals shall not knowingly participate in sports wagering activities or provide information to individuals involved in or associated with any type of sports wagering activities concerning intercollegiate, amateur or professional athletics competition: *(Adopted: 4/26/07 effective 8/1/07)*

- (a) Staff members of an institution's athletics department;
- (b) Nonathletics department staff members who have responsibilities within or over the athletics department (e.g., chancellor or president, faculty athletics representative, individual to whom athletics reports);
- (c) Staff members of a conference office; and
- (d) Student-athletes.

10.3.1 Scope of Application. [#] The prohibition against sports wagering applies to any institutional practice or any competition (intercollegiate, amateur or professional) in a sport in which the Association conducts championship competition, in bowl subdivision football and in emerging sports for women. *(Adopted: 4/26/07 effective 8/1/07)*

10.3.1.1 Exception. [#] The provisions of Bylaw 10.3 are not applicable to traditional wagers between institutions (e.g., traditional rivalry) or in conjunction with particular contests (e.g., bowl games). Items wagered must be representative of the involved institutions or the states in which they are located. *(Adopted: 4/26/07 effective 8/1/07)*

10.3.2 Sanctions. [#] The following sanctions for violations of Bylaw 10.3 shall apply: *(Adopted: 4/27/00 effective 8/1/00, Revised: 4/26/07 effective 8/1/07)*

- (a) A student-athlete who engages in activities designed to influence the outcome of an intercollegiate contest or in an effort to affect win-loss margins ("point shaving") or who participates in any sports wagering activity involving the student-athlete's institution shall permanently lose all remaining regular-season and postseason eligibility in all sports. *(Revised: 4/26/07 effective 8/1/07)*
- (b) A student-athlete who participates in any sports wagering activity through the Internet, a bookmaker or a parlay card shall be ineligible for all regular-season and postseason competition for a minimum period of one year from the date of the institution's determination that a violation occurred and shall be charged with the loss of a minimum of one season of eligibility. If the student-athlete is determined to have been involved in a later violation of any portion of Bylaw 10.3, the student-athlete shall permanently lose all remaining regular-season and postseason eligibility in all sports. *(Revised: 4/26/07 effective 8/1/07)*

10.4 DISCIPLINARY ACTION [#]

Prospective or enrolled student-athletes found in violation of the provisions of this regulation shall be ineligible for further intercollegiate competition, subject to appeal to the Committee on Student-Athlete Reinstatement for restoration of eligibility. (See Bylaw 10.3.2 for sanctions of student-athletes involved in violations of Bylaw 10.3.) Institutional staff members found in violation of the provisions of this regulation shall be subject to disciplinary or corrective action as set forth in Bylaw 19.5.2.2 of the NCAA enforcement procedures, whether such violations occurred at the certifying institution or during the individual's previous employment at another member institution. *(Revised: 1/10/90, 4/27/00 effective 8/1/00, 4/26/07 effective 8/1/07)*

Conduct and Employment of Athletics Personnel

11.01	Definitions and Applications	47	11.5	Certification to Recruit Off Campus	51
11.1	Conduct of Athletics Personnel	49	11.6	Limitations on Scouting of Opponents	51
11.2	Contractual Agreements	49	11.7	Limitations on the Number and	
11.3	Compensation and Remuneration	50		Duties of Coaches	52
11.4	Employment of High School, Preparatory School or Two-Year College Coaches, or Other Individuals Associated with Prospective Student-Athletes	50			

11.01 DEFINITIONS AND APPLICATIONS

11.01.1 Bonus. A bonus is a direct cash payment over and above an athletics department staff member's institutional salary in recognition of a specific and extraordinary achievement (see Bylaw 11.3.2.3).

11.01.2 Coach, Head or Assistant. A head or assistant coach is any coach who is designated by the institution's athletics department to perform coaching duties and who serves in that capacity on a volunteer or paid basis. *(Revised: 1/10/91 effective 8/1/92)*

11.01.3 Coach, Graduate Assistant—Bowl Subdivision Football and Women's Rowing.

[FBS] In bowl subdivision football, a graduate assistant coach is any coach who has received a baccalaureate degree and has either received his or her first baccalaureate degree or has exhausted athletics eligibility (whichever occurs later) within the previous seven years and qualifies for appointment as a graduate assistant under the policies of the institution. In women's rowing, a graduate assistant coach is any coach who has received a baccalaureate degree and qualifies for appointment as a graduate assistant under the policies of the institution. In bowl subdivision football and women's rowing, the individual is not required to be enrolled in a specific graduate degree program unless required by institutional policy. The following provisions shall apply: *(Revised: 1/10/91, 1/10/92, 1/9/06 effective 8/1/06, 12/15/06, 1/8/07 effective 8/1/07, 4/29/10 for new appointments)*

- The individual shall be enrolled in at least 50 percent of the institution's minimum regular graduate program of studies, except that during his or her final semester or quarter of the degree program, he or she may be enrolled in less than 50 percent of the institution's minimum regular program, provided he or she is carrying (for credit) the courses necessary to complete the degree requirements. If the individual fails to complete all degree requirements during the term in which he or she is enrolled in less than 50 percent of the institution's minimum regular program, the result shall be an institutional violation per Constitution 2.8.1. An institution may appoint a midyear replacement graduate assistant coach who is enrolled in less than 50 percent of the institution's minimum regular graduate program of studies (or is not yet enrolled), provided the graduate assistant coach has been accepted for enrollment in a graduate program beginning with the next regular academic term; *(Adopted: 1/8/07 effective 8/1/07, Revised: 1/16/10 effective 8/1/10)*
- The individual may not receive compensation or remuneration in excess of the value of a full grant-in-aid for a full-time student, based on the resident status of that individual, and the receipt of four complimentary tickets to the institution's intercollegiate football and basketball games;
- Graduate and postgraduate financial assistance administered outside the institution (e.g., NCAA postgraduate scholarship) shall be excluded from the individual's limit on remuneration, provided such assistance is awarded through an established and continuing program to aid graduate students and the donor of the assistance does not restrict the recipient's choice of institutions; *(Adopted: 1/11/89)*
- The individual may not serve as a graduate assistant coach for a period of more than two years except that if the individual successfully completes 24-semester or 36-quarter hours during the initial two-year period, the individual may serve as a graduate assistant coach for a third year. The Legislative Council Subcommittee for Legislative Relief may approve a waiver of these limitations based on the fact that the student's service as a coach and enrollment as a graduate student were interrupted for reasons that are unrelated to athletics, or to personal or family finances, and that are beyond the control of the institution or the coach. Such a waiver may not be granted solely to permit the completion of a graduate program; *(Revised: 1/16/93, 11/1/07 effective 8/1/08)*

than a full-time program of studies, provided he or she is carrying (for credit) the courses necessary to complete the degree requirements;

- (b) The individual may participate in limited on-court or on-field activities during practice (e.g., assist with drills, throw batting practice) or competition (e.g., assist with warm-up activities) involving student-athletes on a regular basis;
- (c) The individual shall not provide instruction to student-athletes;
- (d) The individual shall not participate in countable athletically related activities (e.g., practice player) except as permitted in Bylaw 11.01.6-(b); and
- (e) In baseball, the individual shall forfeit any remaining eligibility in the sport at the institution at which the individual serves as a manager. (*Adopted: 4/29/10 effective 8/1/10*)

11.01.7 Supplemental Pay. Supplemental pay is the payment of cash over and above an athletics department staff member's institutional salary by an outside source for the purpose of increasing that staff member's annual earnings (see Bylaw 11.3.2.2).

11.1 CONDUCT OF ATHLETICS PERSONNEL

11.1.1 Honesty and Sportsmanship. Individuals employed by or associated with a member institution to administer, conduct or coach intercollegiate athletics shall act with honesty and sportsmanship at all times so that intercollegiate athletics as a whole, their institutions and they, as individuals, represent the honor and dignity of fair play and the generally recognized high standards associated with wholesome competitive sports. (See Bylaw 10 for more specific ethical-conduct standards.)

11.1.2 Responsibility for Violations of NCAA Regulations. Institutional staff members found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, whether such violations occurred at the certifying institution or during the individual's previous employment at another member institution.

11.1.2.1 Responsibility of Head Coach. It shall be the responsibility of an institution's head coach to promote an atmosphere for compliance within the program supervised by the coach and to monitor the activities regarding compliance of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach. (*Adopted: 4/28/05*)

11.1.3 Use of Association Name or Affiliation. Staff members of member institutions and others serving on the Association's committees or acting as consultants shall not use, directly or by implication, the Association's name or their affiliation with the Association in the endorsement of products or services.

11.1.4 Representing Individuals in Marketing Athletics Ability/Reputation. Staff members of the athletics department of a member institution shall not represent, directly or indirectly, any individual in the marketing of athletics ability or reputation to an agent, a professional sports team or a professional sports organization, including receiving compensation for arranging commercial endorsements or personal appearances for former student-athletes, except as specified in Bylaw 11.1.4.1, and shall not receive compensation or gratuities of any kind, directly or indirectly, for such services. (*Revised: 1/10/92, 1/11/94*)

11.1.4.1 Exception—Professional Sports Counseling Panel and Head Coach. An institution's professional sports counseling panel or a head coach in a sport may contact agents, professional sports teams or professional sports organizations on behalf of a student-athlete, provided no compensation is received for such services. The head coach shall consult with and report his or her activities on behalf of the student-athlete to the institution's professional sports counseling panel. If the institution has no such panel, the head coach shall consult with and report his or her activities to the president or chancellor [or an individual or group (e.g., athletics advisory board) designated by the president or chancellor]. (*Revised: 11/1/01 effective 8/1/02, 3/8/06*)

11.1.5 Use of Tobacco Products. The use of tobacco products is prohibited by all game personnel (e.g., coaches, trainers, managers and game officials) in all sports during practice and competition. Uniform penalties (as determined by the applicable rules-making committees and sports committees with rules-making responsibilities) shall be established for such use. (*Adopted: 1/11/94 effective 8/1/94, Revised: 1/10/95, 1/14/97 effective 8/1/97*)

11.2 CONTRACTUAL AGREEMENTS

11.2.1 Stipulation That NCAA Enforcement Provisions Apply. Contractual agreements or appointments between a coach and an institution shall include the stipulation that a coach who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, including suspension without pay or termination of employment for significant or repetitive violations. (*Revised: 3/10/04*)

11.2.2 Athletically Related Income. Contractual agreements, including letters of appointment, between a full-time or part-time athletics department staff member (excluding secretarial or clerical personnel) and an institution shall include the stipulation that the staff member is required to provide a written detailed account annually to the president or chancellor for all athletically related income and benefits from sources outside the institution. In addition, the approval of all athletically related income and benefits shall be consistent with the institution's

policy related to outside income and benefits applicable to all full-time or part-time employees. Sources of such income shall include, but are not limited to, the following: (*Revised: 1/10/92, 1/11/94, 1/10/95, 4/26/01 effective 8/1/01, 3/8/06*)

- (a) Income from annuities;
- (b) Sports camps;
- (c) Housing benefits (including preferential housing arrangements);
- (d) Country club memberships;
- (e) Complimentary ticket sales;
- (f) Television and radio programs; and
- (g) Endorsement or consultation contracts with athletics shoe, apparel or equipment manufacturers.

11.3 COMPENSATION AND REMUNERATION

11.3.1 Control of Employment and Salaries. The institution, as opposed to any outside source, shall remain in control of determining who is to be its employee and the amount of salary the employee is to receive within the restrictions specified by NCAA legislation.

11.3.2 Income in Addition to Institutional Salary.

11.3.2.1 Bona Fide Outside Employment. A staff member may earn income in addition to the institutional salary by performing services for outside groups. (*Revised: 1/10/92, 4/26/01 effective 8/1/01*)

11.3.2.2 Supplemental Pay. An outside source is prohibited from paying or regularly supplementing an athletics department staff member's annual salary and from arranging to supplement that salary for an unspecified achievement. This includes the donation of cash from outside sources to the institution earmarked for the staff member's salary or supplemental income. It would be permissible for an outside source to donate funds to the institution to be used as determined by the institution, and it would be permissible for the institution, at its sole discretion, to use such funds to pay or supplement a staff member's salary.

11.3.2.3 Bonuses for Specific and Extraordinary Achievement. An institution may permit an outside individual, group or agency to supplement an athletics department staff member's salary with a direct cash payment in recognition of a specific and extraordinary achievement (e.g., contribution during career to the athletics department of the institution, winning a conference or national championship, number of games or meets won during career/season), provided such a cash supplement is in recognition of a specific achievement and is in conformance with institutional policy.

11.3.2.4 Noninstitutional Publications That Report on Athletics Program. Athletics department staff members shall not endorse (either orally or in writing) any noninstitutional publication dedicated primarily to reporting on an institution's athletics activities, except as provided in this section, and shall not write for such publications. (*Adopted: 1/16/93, Revised: 1/11/94, 4/26/01 effective 8/1/01*)

11.3.2.4.1 Educational Articles. Athletics department staff members may write educational articles related to NCAA rules and crowd control for noninstitutional publications dedicated primarily to reporting on an institution's athletics activities. (*Adopted: 1/11/94*)

11.3.2.5 Recruiting Service Consultants. Institutional athletics department staff members may not endorse, serve as consultants or participate on advisory panels for any recruiting or scouting service involving prospective student-athletes. (*Adopted: 1/16/93*)

11.3.2.6 Quotations and Pictures Used to Promote a Camp. An institution's coaching staff member may not promote a noninstitutional camp or clinic by permitting the use of his or her quotations and/or pictures in the camp or clinic brochure, unless that coaching staff member is employed by the camp. (*Adopted: 1/14/97 effective 8/1/97*)

11.3.2.7 Consultant for or Endorsement of Noninstitutional Athletics Events Involving Prospective Student-Athletes. An athletics department staff member may not serve as a consultant for a noninstitutional athletics event that primarily involves prospective student-athletes and may not endorse or promote such an event. (*Adopted: 1/15/11*)

11.3.2.8 Promotion or Endorsement of a Prospective Student-Athlete's Team, Coach or Athletics Facility. An athletics department staff member shall not promote or endorse a prospective student-athlete's team or coach, or an athletics facility that is primarily used by prospective student-athletes. (*Adopted: 1/15/11*)

11.4 EMPLOYMENT OF HIGH SCHOOL, PREPARATORY SCHOOL OR TWO-YEAR COLLEGE COACHES, OR OTHER INDIVIDUALS ASSOCIATED WITH PROSPECTIVE STUDENT-ATHLETES

11.4.1 High School, Preparatory School or Two-Year College Coach. An institution may not employ a high school, preparatory school or two-year college coach who remains a coach in the same sport at the high school, preparatory school or two-year college. This provision does not preclude employment of a high school,

BYLAW, ARTICLE 12

Amateurism

12.01	General Principles	61	12.4	Employment	71
12.02	Definitions and Applications	61	12.5	Promotional Activities	72
12.1	General Regulations	62	12.6	Financial Donations from Outside Organizations	76
12.2	Involvement with Professional Teams	67			
12.3	Use of Agents	70			

12.01 GENERAL PRINCIPLES

12.01.1 Eligibility for Intercollegiate Athletics. Only an amateur student-athlete is eligible for intercollegiate athletics participation in a particular sport.

12.01.2 Clear Line of Demarcation. Member institutions' athletics programs are designed to be an integral part of the educational program. The student-athlete is considered an integral part of the student body, thus maintaining a clear line of demarcation between college athletics and professional sports.

12.01.3 "Individual" vs. "Student-Athlete." NCAA amateur status may be lost as a result of activities prior to enrollment in college. If NCAA rules specify that an "individual" may or may not participate in certain activities, this term refers to a person prior to and after enrollment in a member institution. If NCAA rules specify a "student-athlete," the legislation applies only to that person's activities after enrollment.

12.01.4 Permissible Grant-in-Aid. A grant-in-aid administered by an educational institution is not considered to be pay or the promise of pay for athletics skill, provided it does not exceed the financial aid limitations set by the Association's membership.

12.02 DEFINITIONS AND APPLICATIONS

12.02.1 Individual. An individual, for purposes of this bylaw, is any person of any age without reference to enrollment in an educational institution or status as a student-athlete.

12.02.2 Pay. Pay is the receipt of funds, awards or benefits not permitted by the governing legislation of the Association for participation in athletics.

12.02.3 Professional Athlete. A professional athlete is one who receives any kind of payment, directly or indirectly, for athletics participation except as permitted by the governing legislation of the Association.

12.02.4 Professional Athletics Team. A professional team is any organized team that:

- (a) Provides any of its players more than actual and necessary expenses for participation on the team, except as otherwise permitted by NCAA legislation. Actual and necessary expenses are limited to the following, provided the value of these items is commensurate with the fair market value in the locality of the player(s) and is not excessive in nature: (*Revised: 4/25/02 effective 8/1/02*)
 - (1) Meals directly tied to competition and practice held in preparation for such competition;
 - (2) Lodging directly tied to competition and practice held in preparation for such competition;
 - (3) Apparel, equipment and supplies;
 - (4) Coaching and instruction;
 - (5) Health/medical insurance;
 - (6) Transportation (expenses to and from practice competition, cost of transportation from home to training/practice site at the beginning of the season and from training/practice site to home at the end of season);
 - (7) Medical treatment and physical therapy;
 - (8) Facility usage; (*Revised: 4/24/03*)
 - (9) Entry fees; and (*Revised: 4/24/03*)
 - (10) Other reasonable expenses; or (*Adopted: 4/24/03, Revised: 10/28/04*)
- (b) Declares itself to be professional (see Bylaw 12.2.3.2.4). (*Revised: 8/8/02*)

Enforcement

19.01	General Principles	319	19.4	Notice of Charges and Opportunity to Appear	322
19.02	Definitions and Applications	319	19.5	Penalties	322
19.1	Committee on Infractions	320	19.6	Rights of Member to Appeal	325
19.2	Appeals Committees	321	19.7	Restitution	326
19.3	Establishment and Revision of Enforcement Policies and Procedures	321			

19.01 GENERAL PRINCIPLES

19.01.1 Mission of NCAA Enforcement Program. It shall be the mission of the NCAA enforcement program to eliminate violations of NCAA rules and impose appropriate penalties should violations occur. The program is committed to fairness of procedures and the timely and equitable resolution of infractions cases. The achievement of these objectives is essential to the conduct of a viable and effective enforcement program. Further, an important consideration in imposing penalties is to provide fairness to uninvolved student-athletes, coaches, administrators, competitors and other institutions. *(Adopted: 1/11/94)*

19.01.2 Exemplary Conduct. Individuals employed by or associated with member institutions for the administration, the conduct or the coaching of intercollegiate athletics are, in the final analysis, teachers of young people. Their responsibility is an affirmative one, and they must do more than avoid improper conduct or questionable acts. Their own moral values must be so certain and positive that those younger and more pliable will be influenced by a fine example. Much more is expected of them than of the less critically placed citizen.

19.01.3 Responsibility to Cooperate. All representatives of member institutions shall cooperate fully with the NCAA enforcement staff, Committee on Infractions, Infractions Appeals Committee and Board of Directors to further the objectives of the Association and its enforcement program. The enforcement policies and procedures are an essential part of the intercollegiate athletics program of each member institution and 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. *(Revised: 11/1/07 effective 8/1/08)*

19.01.4 Violations by Institutional Staff Members. Institutional staff members found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures, whether such violations occurred at the certifying institution or during the individual's previous employment at another member institution.

19.01.5 Nature of Penalty Structure. As a guiding principle, a penalty imposed under NCAA enforcement policies and procedures should be broad and severe if the violation or violations reflect a general disregard for the governing rules; in those instances in which the violation or violations are isolated and of relative insignificance, then the NCAA penalty shall be specific and limited. Previous violations of NCAA legislation shall be a contributing factor in determining the degree of penalty.

19.02 DEFINITIONS AND APPLICATIONS

19.02.1 Show-Cause Order. A show-cause order is one that requires a member institution to demonstrate to the satisfaction of the Committee on Infractions (or the Infractions Appeals Committee per Bylaw 19.2) why it should not be subject to a penalty (or additional penalty) for not taking appropriate disciplinary or corrective action against an institutional staff member or representative of the institution's athletics interests identified by the committee as having been involved in a violation of NCAA regulations that has been found by the committee. *(Revised: 1/10/95, 4/24/03)*

19.02.2 Types of Violations.

19.02.2.1 Violation, Secondary. A secondary violation is a violation that is isolated or inadvertent in nature, provides or is intended to provide only a minimal recruiting, competitive or other advantage and does not include any significant impermissible benefit (including, but not limited to, an extra benefit, recruiting inducement, preferential treatment or financial aid). Multiple secondary violations by a member institution may collectively be considered as a major violation. *(Revised: 1/11/94, 10/28/10)*

19.02.2.2 Violation, Major. All violations other than secondary violations are major violations, specifically including those that provide an extensive recruiting or competitive advantage. *(Revised: 1/11/94)*

19.02.3 New Evidence. New evidence is evidence that could not reasonably be ascertained prior to the Committee on Infractions hearing. *(Adopted: 1/6/96)*

19.1 COMMITTEE ON INFRACTIONS

The Board of Directors shall appoint a Committee on Infractions, which shall be responsible for administration of the NCAA enforcement program. *(Revised: 11/1/07 effective 8/1/08)*

19.1.1 Composition of Committee. The committee shall be composed of 10 members, seven of whom shall be at present or previously on the staff of an active member institution or member conference of the Association, not more than three and no less than two of whom shall be from the general public and shall not be associated with a collegiate institution, conference, or professional or similar sports organization, or represent coaches or athletes in any capacity. One of the members shall serve as chair and one member shall serve as vice chair. Two members shall be elected as coordinators of appeals, one of whom may be a public member. Two positions shall be allocated for men, two allocated for women and six unallocated. There shall be no subdivision restrictions except that all nonpublic members may not be from the same subdivision; however, the coordinators of appeals shall not be considered in determining whether such a requirement is satisfied. *(Revised: 1/16/93, 10/27/98, 10/28/99, 1/11/00, 11/1/01, 11/31/02)*

19.1.1.1 Quorum. Four members present and voting shall constitute a quorum for conduct of committee business, it being understood that the chair shall make a special effort to have full committee attendance when major infractions cases involving violations are to be considered.

19.1.1.2 Temporary Substitutes. If it appears that one or more members of the committee will be unable to participate in the hearing of a case, the chair may request the Administration Cabinet to designate a former member or members of the committee to rejoin the committee for purposes of the consideration and disposition of that case. *(Revised: 11/1/07 effective 8/1/08)*

19.1.1.3 Term of Office. A member shall serve a three-year term, which shall commence on the first day of September following the member's election. A member may be reappointed but shall not serve more than nine years on the committee, with the exception of the position of coordinator of appeals, which may be filled by a former member of the committee who had previously served nine years. In such instances, a minimum period of three years must have elapsed between the date the committee member previously relinquished duties with the committee and reappointment to the committee as the coordinator of appeals. As with a regular member of the committee, the coordinator of appeals shall serve a three-year term, which commences on the first day of September following the coordinator of appeals' selection. The coordinator of appeals may be reappointed but shall not serve more than nine years on the committee in that capacity. *(Adopted: 1/11/00)*

19.1.1.4 Duties of the Coordinators of Appeals. The coordinators of appeals shall: *(Adopted: 10/28/99, Revised: 10/31/02, 4/28/11)*

- (a) Be responsible for processing appeals to infractions cases on behalf of the committee;
- (b) Be present during institutional hearings before the committee, but will not be active participants;
- (c) Be present and actively participate during committee deliberations; and
- (d) Represent the committee in proceedings before the Infractions Appeals Committee.

19.1.2 Authority of Committee. Disciplinary or corrective actions other than suspension or termination of membership may be effected by members of the Committee on Infractions present and voting at any duly called meeting thereof, provided the call of such a meeting shall have contained notice of the situation presenting the disciplinary problem. Actions of the committee in cases involving major violations, however, shall be subject to review by the Infractions Appeals Committee per Bylaw 19.2, on appeal. *(Revised: 1/16/93, 1/10/95, 4/24/03)*

19.1.2.1 Authority of Vice President for Enforcement Services. Upon review of information developed by the enforcement staff or self-reported by the member institution, the vice president for enforcement services shall identify the charges as involving alleged major or secondary violations, or multiple secondary violations that should be viewed as a major violation. Disciplinary or corrective actions in the case of secondary violations may be effected by the vice president for enforcement services. Said actions shall be taken in accordance with the provisions of the enforcement policies and procedures and shall be subject to review by the committee upon appeal. *(Revised: 4/24/03)*

19.1.2.2 Authority of Committee Chair. In the interim between meetings of the committee, the chair shall be empowered to act on behalf of the committee, subject to committee approval at its next meeting. If at any time, at a meeting or between meetings, the chair is unavailable to act as such, the vice chair is empowered to exercise the functions of the chair. *(Revised: 11/1/01)*

19.1.2.3 Authority of Infractions Appeals Committee. The Infractions Appeals Committee per Bylaw 19.2, shall hear and act upon an institution's or an involved individual's appeal of the findings of major violations and/or the imposition of associated penalties by the Committee on Infractions. *(Revised: 1/16/93, 1/10/95, 4/24/03)*

19.1.3 Duties of Committee. The duties of the Committee on Infractions shall be as follows: *(Revised: 4/24/03)*

- (a) Consider complaints that may be filed with the Association charging the failure of any member to maintain the academic or athletics standards required for membership or the failure of any member to meet the conditions and obligations of membership in the Association;
- (b) Formulate and revise, in accordance with the requirements of Bylaw 19.3, a statement of its established operating policies and procedures, including investigative guidelines (see Bylaw 32);
- (c) Determine facts related to alleged violations and find violations of NCAA rules and requirements;
- (d) Impose an appropriate penalty or show-cause requirement on a member found to be involved in a major violation (or, upon appeal, on a member found to be involved in a secondary violation), or recommend to the Board of Directors suspension or termination of membership; and
- (e) Carry out any other duties directly related to the administration of the Association's enforcement program.

19.2 APPEALS COMMITTEES

19.2.1 Infractions Appeals Committee. The Board of Directors shall appoint an Infractions Appeals Committee, which shall hear and act upon appeals of the findings of major violations by the Committee on Infractions involving member institutions. *(Adopted: 1/16/93, Revised: 1/10/95, 11/1/07 effective 8/1/08)*

19.2.1.1 Composition of Committee. The committee shall be composed of five members. At least one member shall be from the general public and shall not be connected with a collegiate institution, conference, or professional or similar sports organization, or represent coaches or athletes in any capacity. The remaining members shall presently or previously be on the staff of an active member institution or member conference, but shall not serve presently on the Board of Directors. There shall be no subdivision restrictions except that all nonpublic members may not be from the same subdivision. *(Adopted: 1/16/93, Revised: 10/27/98)*

19.2.1.1.1 Temporary Substitutes. If it appears that one or more of the committee members will be unable to participate in the disposition of a case, the chair may request the Administration Cabinet to designate a former member or members of the committee to rejoin the committee for purposes of consideration and disposition of that case. *(Adopted: 4/22/98, Revised: 11/1/07 effective 8/1/08, 4/28/11)*

19.2.1.2 Term of Office. A member shall serve a three-year term, which shall commence on the first day of September following the member's election. A member may be reappointed but shall not serve more than nine years on the committee. *(Adopted: 1/9/96)*

19.2.1.3 Authority and Duties of Committee. The committee shall hear and act on appeals of the findings of major violations by the Committee on Infractions involving member institutions (see Bylaws 32.10 and 32.11). The committee may establish or amend enforcement policies and procedures set forth in Bylaws 32.10 and 32.11 that relate directly to the infractions appeals process, subject to review and approval by the Board of Directors. *(Adopted: 1/16/93, Revised: 1/10/95, 1/14/97, 11/1/07 effective 8/1/08)*

19.2.1.3.1 Notification to Membership. To the extent that the infractions appeals policies and procedures are revised, any member institution involved in the processing of an infractions appeals case shall be notified immediately of the change and the general membership shall be advised through the NCAA website. *(Adopted: 1/14/97)*

19.2.1.3.2 Review by Convention. Policies and procedures established by the Infractions Appeals Committee, per Bylaw 19.2.1.3, are subject to review and approval by the Board of Directors (see Constitution 5.2.3.3). *(Adopted: 1/14/97, Revised: 4/24/03, 11/1/07 effective 8/1/08)*

19.3 ESTABLISHMENT AND REVISION OF ENFORCEMENT POLICIES AND PROCEDURES

19.3.1 Amendment by Committee and Approval by Board of Directors. The Committee on Infractions may establish or amend the policies and procedures in regard to issues other than those concerning institutional penalties, restitution, and committee duties and structure. A member institution shall be provided notice of alleged NCAA rules violations for which it is charged before any penalty is imposed, as well as the opportunity to appear before the committee and the opportunity to appeal the committee's findings of major violations or penalties (see Bylaws 19.4 and 19.5). The policies and procedures governing the administration of the Association's enforcement program, as set forth in Bylaw 32, are subject to review and approval by the Board of Directors at its next regularly scheduled meeting. *(Revised: 11/1/07 effective 8/1/08)*

19.3.1.1 Notification to Membership. To the extent that the enforcement policies and procedures are revised, any member institution involved in the processing of an infractions case shall be notified immediately of the change.

19.3.2 Amendment to Enforcement Procedures. The enforcement policies and procedures set forth in Bylaw 32 may be amended in accordance with the legislative process. *(Revised: 4/24/03)*

19.4 NOTICE OF CHARGES AND OPPORTUNITY TO APPEAR

19.4.1 For Major Violations. A member under investigation for major violations shall be given the following:

- (a) Notice of any specific charges against it and the facts upon which such charges are based; and
- (b) An opportunity to appear before the Committee on Infractions (or the Infractions Appeals Committee per Bylaw 19.2) to answer such charges by the production of evidence (see Bylaw 19.6.2). (*Revised: 1/16/93, 1/10/95, 4/24/03*)

19.4.2 For Secondary Violations. A member under investigation for secondary violations shall be given the following:

- (a) Notice of any specific charges against it and the facts upon which such charges are based; and
- (b) An opportunity to provide a written response to the vice president for enforcement services (or to appear before the Committee on Infractions upon appeal) to answer such charges by the production of evidence (see Bylaw 19.6.1).

19.4.3 New Findings. When an institution and involved individual appear before the committee to discuss a response to the notice of allegations, the hearing shall be directed toward the general scope of the notice of allegations but shall not preclude the committee from finding any violation resulting from information developed or discussed during the hearing. (*Revised: 4/24/03*)

19.5 PENALTIES

19.5.1 Penalties for Secondary Violations. The vice president for enforcement services, upon approval by the chair or another member of the Committee on Infractions designated by the chair, or the committee may determine that no penalty is warranted in a secondary case, that an institutional- or conference-determined penalty is satisfactory or, if appropriate, impose a penalty. Among the disciplinary measures are: (*Revised: 1/11/94*)

- (a) Termination of the recruitment of a prospective student-athlete by the institution or, if the prospective student-athlete enrolls (or has enrolled) in the institution, permanent ineligibility to represent the institution in intercollegiate competition (unless eligibility is restored by the Committee on Student-Athlete Reinstatement upon appeal);
- (b) Forfeit/vacate contests in which an ineligible student-athlete participated;
- (c) Prohibition of the head coach or other staff members in the involved sport from participating in any off-campus recruiting activities for up to one year; (*Revised: 1/11/94*)
- (d) An institutional fine for each violation, with the monetary penalty ranging in total from \$500 to \$5,000, except when an ineligible student-athlete participates in an NCAA championship or other postseason competition, in which case the \$5,000 limit shall not apply; (*Revised: 4/26/01 effective 8/1/01*)
- (e) A limited reduction in the number of financial aid awards that may be awarded during a specified period in the sport involved to the maximum extent of 20 percent of the maximum number of awards normally permissible in that sport;
- (f) Institutional recertification that its current athletics policies and practices conform to all requirements of NCAA regulations;
- (g) Suspension of the head coach or other staff members for one or more competitions; (*Adopted: 1/11/94*)
- (h) Public reprimand (to be invoked only in situations in which the Committee on Infractions or the vice president for enforcement services, upon approval by the committee, determines that a penalty, in addition to any institutional- or conference-determined penalty, is warranted); and (*Adopted: 1/11/94*)
- (i) Requirement that a member institution that has been found in violation, or that has an athletics department staff member who has been found in violation of the provisions of NCAA legislation while representing another institution, show cause why a penalty or an additional penalty should not be imposed if it does not take appropriate disciplinary or corrective action against the athletics department personnel involved, any other institutional employee if the circumstances warrant or representatives of the institution's athletics interests. (*Adopted: 1/11/94*)

19.5.2 Penalties for Major Violations. Penalties for a major violation shall be significantly more severe than those for a secondary violation and shall be consistent with the penalty structure and guidelines used by other regulatory committees (e.g., Division I Committee on Academic Performance). The Committee on Infractions may impose one or more of the following penalties: (*Revised: 4/28/11 for any institution that receives a notice of inquiry after 4/28/11*)

- (a) Public reprimand and censure.
- (b) Probationary period for up to five years (including a periodic in-person monitoring system, written institutional reports, and institutional affirmation that current athletics policies and procedures conform to all requirements of NCAA regulations).

- (c) Suspension of institutional staff members from their duties for a specified period if such staff members are determined by the Committee on Infractions to have engaged in or condoned a major violation.
- (d) Reduction in the number of financial aid awards (as defined in Bylaw 15.02.4.1) that may be awarded during a specified period.
- (e) Reduction in the number of expense-paid recruiting visits to the institution in the involved sport.
- (f) Prohibition against, or limits on, recruiting activities by some or all coaching staff members in an involved sport.
- (g) Prohibition against specified competition in the sport (including, but not limited to, postseason competition, invitational tournaments and exempt contests or dates of competition, such as foreign tours or contests in Alaska or Hawaii), particularly in cases in which:
 - (1) An involved individual remains employed at the institution;
 - (2) A significant competitive advantage resulted from the violation;
 - (3) The violation reflects a lack of institutional control, failure to monitor a program, or a violation of the cooperative principle set forth in Bylaw 32.1.4;
 - (4) The violation includes findings of academic fraud; or
 - (5) The institution is a repeat violator (as defined in Bylaw 19.5.2.1).
- (h) Vacation of records in a cases which a student-athlete has competed while ineligible, particularly in cases involving academic fraud, serious intentional violations, direct involvement of a coach or a high-ranking school administrator, a large number of violations, competition while academically ineligible, a finding of failure to monitor or lack of institutional control, a repeat violator, or a case in which vacation or a similar penalty would be imposed if the underlying violations were secondary. The penalties may include one or more of the following:
 - (1) Vacation of individual records and performances;
 - (2) Vacation of team records and performances, including wins from the career record of the head coach in the involved sport, or, in applicable cases, reconfiguration of team point totals; or
 - (3) Return of individual or team awards to the Association.
- (i) Financial penalty.
- (j) Prohibition against television appearances of the institution in the sport in which the violation occurred.
- (k) Requirement that an institution that has been found in violation, or that has an athletics department staff member who has been found in violation of the provisions of NCAA legislation while representing another institution, show cause why a penalty or additional penalty should not be imposed, if, in the opinion of the Committee on Infractions, the institution has not taken appropriate disciplinary or corrective action against athletics department personnel involved in the infractions case or any other institutional employee, if the circumstances warrant, or a representative of the institution's athletics interests.
 - (1) The penalty imposed under this provision may include a recommendation to the membership that the institution's membership in the Association be suspended or terminated.
 - (2) "Appropriate disciplinary or corrective action" may include severance of relations with any representative of the institution's athletics interests who may be involved; the debarment of the head coach or any assistant coach involved in the infraction from coaching, recruiting, or participation in speaking engagements; and the prohibition of all recruiting in a specified sport for a specified period. The nature and extent of such action shall be determined by the institution, but the determination of whether the action is appropriate in the fulfillment of NCAA policies and principles, and its resulting effect on any institutional penalty, shall be solely that of the Committee on Infractions (or the Infractions Appeals Committee per Bylaw 19.2).
 - (3) In the event the Committee on Infractions imposes additional penalties upon an institution, the institution shall be provided the opportunity to appear before the committee, further, the institution shall be provided the opportunity to appeal (per Bylaw 19.6.2) any additional penalty imposed by the Committee on Infractions.
- (l) Other penalties as appropriate.

19.5.2.1 Repeat Violators.

19.5.2.1.1 Time Period. An institution shall be considered a "repeat" violator if the Committee on Infractions finds that a major violation has occurred within five years of the starting date of a major penalty. For this provision to apply, at least one major violation must have occurred within five years after the starting date of the penalties in the previous case. It shall not be necessary that the Committee on Infractions' hearing be conducted or its report issued within the five-year period. (*Revised: 1/14/97 effective 8/1/97*)

19.5.2.1.2 Repeat-Violator Penalties. A repeat violator shall be subject to enhanced major violation penalties and any or all of the following additional penalties: *(Revised: 1/11/94, 4/28/11; for any institution that receives notice of inquiry after 4/28/11)*

- (a) The prohibition of some or all outside competition in the sport involved in the latest major violation for a prescribed period as deemed appropriate by the Committee on Infractions and the prohibition of all coaching staff members in that sport from involvement directly or indirectly in any coaching activities at the institution during that period; *(Revised: 4/28/11)*
- (b) The elimination of all initial grants-in-aid and all recruiting activities in the sport involved in the latest major violation in question for a prescribed period; *(Revised: 4/28/11)*
- (c) The requirement that all institutional staff members serving on the Board of Directors, Leadership Council, Legislative Council or other cabinets or committees of the Association resign those positions, it being understood that all institutional representatives shall be ineligible to serve on any NCAA committee for a prescribed period; and *(Revised: 11/1/07 effective 8/1/08, 4/28/11)*
- (d) The requirement that the institution relinquish its voting privilege in the Association for a prescribed period. *(Revised: 4/28/11)*

19.5.2.2 Probationary Periods.

19.5.2.2.1 Conditions of Probation. The committee (or the Infractions Appeals Committee per Bylaw 19.2) may identify possible conditions that an institution must satisfy during a probationary period. Such conditions shall be designed on a case-by-case basis to focus on the institution's administrative weaknesses detected in the case and shall include, but not be limited to, written reports from the institution pertaining to areas of concern to the committee (or the Infractions Appeals Committee), in-person reviews of the institution's athletics policies and practices by the NCAA administrator for the Committee on Infractions, implementation of educational or deterrent programs, and audits for specific programs or teams. If the institution fails to satisfy such conditions, the committee (or the Infractions Appeals Committee per Bylaw 19.2) may reconsider the penalties in the case and may extend the probationary period and/or impose additional sanctions. *(Revised: 1/10/95, 4/24/03)*

19.5.2.2.2 Review Prior to Restoration of Membership Rights and Privileges. In the event the committee imposes a penalty involving a probationary period, the institution shall be notified that after the penalty becomes effective, the NCAA administrator for the Committee on Infractions will review the athletics policies and practices of the institution prior to action by the committee to restore the institution to full rights and privileges of membership in the Association. *(Revised: 1/10/95)*

19.5.2.3 Television Appearance Limitations. In some instances, an institution is rendered ineligible to appear on television programs. When an institution is banned from such television programs, the penalty shall specify that the institution may not enter into any contracts or agreements for such appearances until the institution's probationary status has been terminated and it has been restored to full rights and privileges of membership. *(Revised: 1/10/92)*

19.5.2.3.1 Closed-Circuit Telecast Exception. The Board of Directors is authorized to permit a closed-circuit telecast, limited to the campus of the opponent of the ineligible institution, it being understood that no rights fee is to be paid to the ineligible institution. *(Revised: 11/1/07 effective 8/1/08)*

19.5.2.4 Disassociation of Representatives of Athletics Interests. The disassociation of relations with a representative of an institution's athletics interests may be imposed on a permanent basis, for the duration of the applicable probationary period or for another specified period of time. When an institution is required to show cause why a representative of the institution's athletics interests should not be disassociated from its athletics program, such disassociation shall require that the institution:

- (a) Refrain from accepting any assistance from the individual that would aid in the recruitment of prospective student-athletes or the support of enrolled student-athletes;
- (b) Not accept financial assistance for the institution's athletics program from the individual;
- (c) Ensure that no athletics benefit or privilege be provided to the individual that is not generally available to the public at large; and
- (d) Take such other actions against the individual that the institution determines to be within its authority to eliminate the involvement of the individual in the institution's athletics program.

19.5.2.5 Notification to Regional Accrediting Agency. When an institution has been found to be in violation of NCAA requirements, and the report reflects academic violations or questionable academic procedures, the president shall be authorized to forward a copy of the report to the appropriate regional accrediting agency.

19.5.2.6 Review of Penalty.

19.5.2.6.1 Newly Discovered Evidence or Prejudicial Error. When a penalty has been imposed and publicly announced and the appeal opportunity has been exhausted, there shall be no review of the penalty except upon a showing of newly discovered evidence (per Bylaw 19.02.3) that is directly related to the findings in the case or that there was prejudicial error in the procedure that was followed in the processing of the case by the committee. *(Revised: 1/9/96)*

19.5.2.6.1.1 Review Process. Any institution that initiates such a review shall be required to submit a brief of its appeal to the committee and to furnish sufficient copies of the brief for distribution to all members of the committee. The committee shall review the brief and decide by majority vote whether it shall grant a hearing of the appeal.

19.5.2.6.1.2 Institution or Conference Discipline as New Evidence. Disciplinary measures imposed by the institution or its conference following the NCAA's action may be considered to be "newly discovered evidence" for the purposes of this section.

19.5.2.6.1.3 No Imposition of New Penalty. If a hearing of the appeal is granted, the committee may reduce or eliminate any penalty but may not impose any new penalty. The committee's decision with respect to the penalty shall be final and conclusive for all purposes.

19.5.2.6.2 Reconsideration of Penalty. The institution shall be notified that should any portion of the penalty in the case be set aside for any reason other than by appropriate action of the Association, the penalty shall be reconsidered by the NCAA. In such cases, any extension or adjustment of a penalty shall be proposed by the Committee on Infractions after notice to the institution and hearing. Any such action by the committee shall be subject to appeal.

19.5.3 Discipline of Affiliated Member.

19.5.3.1 Termination or Suspension. The membership of any affiliated member failing to meet the conditions and obligations of membership or failing to support and adhere to the purposes and policies set forth in Constitution 1 may be terminated or suspended or the member otherwise may be disciplined through the following procedure: (*Revised: 1/15/11 effective 8/1/11*)

- (a) The Executive Committee by a two-thirds majority of its members present and voting, may take such action on its own initiative; or (*Adopted: 1/11/89 Revised: 1/15/11 effective 8/1/11*)
- (b) The Committee on Infractions, by majority vote, may recommend such action to the Executive Committee, which may adopt the recommendation by a two-thirds vote of its members present and voting; and
- (c) The affiliated member shall be advised of the proposed action at least 30 days prior to any Committee on Infractions or Executive Committee meeting in which such action is considered and shall be provided the opportunity to appear at any such meeting. (*Revised: 1/15/11 effective 8/1/11*)

19.5.4 Recommendation to Committee on Athletics Certification. The Committee on Infractions may recommend to the Committee on Athletics Certification that an institution's certification status be reviewed as a result of the institution's completed infractions case. (*Adopted: 1/16/93 effective 1/1/94*)

19.6 RIGHTS OF MEMBER TO APPEAL

19.6.1 Appeal of Secondary Violations. A member shall have the right to appeal actions taken by the vice president of enforcement services in reference to secondary violations. To appeal, the member must submit written notice of appeal to the Committee on Infractions. The Committee on Infractions must receive the written notice of appeal and any supporting information within 30 days of the date the institution receives the enforcement staff's decision. (*Adopted: 1/16/93 effective 1/1/94*)

19.6.2 Appeal of Major Violations. A member shall have the right to give written notice of appeal of the committee's findings of major violations (subject to Bylaw 32.10.2), the penalty, or both to the Infractions Appeals Committee per Bylaw 19.2. (*Revised: 1/16/93, 1/10/95, 4/24/03*)

19.6.3 Appeal by an Institutional Staff Member. If any current or former institutional staff member participates in a hearing (either in person or through written presentation) before the Committee on Infractions and is involved in a finding of a violation against that individual, the individual shall be given the opportunity to appeal any of the findings in question (subject to the conditions of Bylaw 32.10.2) or the committee's decision to issue a show-cause order to the Infractions Appeals Committee. Under such circumstances, the individual and personal legal counsel may appear before the appeals committee at the time it considers the pertinent findings. (*Revised: 1/16/93, 1/10/95, 1/6/96, 4/24/03*)

19.6.4 Student-Athlete Appeal. If an institution concludes that continued application of the rule(s) would work an injustice on any student-athlete, an appeal shall be submitted to the Committee on Student-Athlete Reinstatement and promptly reviewed.

19.6.4.1 Obligation of Institution to Take Appropriate Action. When the committee (or the Infractions Appeals Committee per Bylaw 19.2) finds that there has been a violation of the constitution or bylaws affecting the eligibility of an individual student-athlete or student-athletes, the institution involved and its conference(s), if any, shall be notified of the violation and the name(s) of the student-athlete(s) involved, it being understood that if the institution fails to take appropriate action, the involved institution shall be cited to show cause under the Association's regular enforcement procedures why it should not be disciplined for a failure to abide by the conditions and obligations of membership (declaration of ineligibility) if it permits the student-athlete(s) to compete. (*Revised: 1/10/95, 4/24/03*)

19.7 RESTITUTION

If a student-athlete who is ineligible under the terms of the constitution, bylaws or other legislation of the Association is permitted to participate in intercollegiate competition contrary to such NCAA legislation but in accordance with the terms of a court restraining order or injunction operative against the institution attended by such student-athlete or against the Association, or both, and said injunction is voluntarily vacated, stayed or reversed or it is finally determined by the courts that injunctive relief is not or was not justified, the Board of Directors may take any one or more of the following actions against such institution in the interest of restitution and fairness to competing institutions: *(Revised: 11/1/07 effective 8/1/08)*

- (a) Require that individual records and performances achieved during participation by such ineligible student-athlete shall be vacated or stricken;
- (b) Require that team records and performances achieved during participation by such ineligible student-athlete shall be vacated or stricken;
- (c) Require that team victories achieved during participation by such ineligible student-athlete shall be abrogated and the games or events forfeited to the opposing institutions;
- (d) Require that individual awards earned during participation by such ineligible student-athlete shall be returned to the Association, the sponsor or the competing institution supplying same;
- (e) Require that team awards earned during participation by such ineligible student-athlete shall be returned to the Association, the sponsor or the competing institution supplying same;
- (f) Determine that the institution is ineligible for one or more NCAA championships in the sports and in the seasons in which such ineligible student-athlete participated;
- (g) Determine that the institution is ineligible for invitational and postseason meets and tournaments in the sports and in the seasons in which such ineligible student-athlete participated;
- (h) Require that the institution shall remit to the NCAA the institution's share of television receipts (other than the portion shared with other conference members) for appearing on any live television series or program if such ineligible student-athlete participates in the contest(s) selected for such telecast, or if the Board of Directors concludes that the institution would not have been selected for such telecast but for the participation of such ineligible student-athlete during the season of the telecast; any such funds thus remitted shall be devoted to the NCAA postgraduate scholarship program; and *(Revised: 11/1/07 effective 8/1/08)*
- (i) Require that the institution that has been represented in an NCAA championship by such a student-athlete shall be assessed a financial penalty as determined by the Committee on Infractions. *(Revised: 4/26/01 effective 8/1/01)*

Enforcement Policies and Procedures

32.1	Committee on Infractions—Special Operating Rules	395	32.7	Summary Disposition and Expedited Hearing	401
32.2	Preliminary Review of Information	395	32.8	Committee on Infractions Hearings	402
32.3	Investigative Procedures	396	32.9	Notification of Committee on Infractions Action	404
32.4	Processing information for Secondary Violations	398	32.10	Appeal Procedure	404
32.5	Notice of Inquiry	399	32.11	Oral Arguments	406
32.6	Notice of Allegations	399			

32.1 COMMITTEE ON INFRACTIONS—SPECIAL OPERATING RULES

32.1.1 Confidentiality. The Committee on Infractions, the Infractions Appeals Committee and the enforcement staff shall treat all cases before them as confidential until they have been announced in accordance with the prescribed procedures. In addition, an institution and any individual subject to NCAA rules involved in a case shall treat that case under inquiry by the enforcement staff, under consideration by the Committee on Infractions and, if appealed, under consideration by the Infractions Appeals Committee, as confidential until the decisions in such a case have been announced in accordance with prescribed procedures. *(Revised: 1/11/94, 4/24/03, 1/13/08, 4/28/11)*

32.1.2 Public Announcements. The enforcement staff shall not confirm or deny the existence of an infractions case before complete resolution of the case through normal NCAA enforcement and hearing procedures. However, if the involved institution or any person involved in the case (e.g., involved individual, representative of the institution's athletics interests, interviewee) makes information concerning a case public, the involved institution, enforcement staff and the involved person may confirm, correct or deny the information made public. *(Revised: 4/24/03, 1/13/08)*

32.1.3 Conflict of Interest. Any member of the Committee on Infractions or the Infractions Appeals Committee shall neither appear at the hearing or oral argument nor participate on the committee when the member is directly connected with an institution under investigation or has a personal, professional or institutional affiliation that reasonably would result in the appearance of prejudice. It is the responsibility of the committee member or members of the Infractions Appeals Committee per Bylaw 19.2 to remove himself or herself if a conflict exists. Objections to the participation of a committee member or the Infractions Appeals Committee member per Bylaw 19.2 should be raised as soon as recognized, but will not be considered unless raised at least one week in advance of the affected hearing or oral argument. *(Revised: 1/16/93, 1/11/94, 4/24/03, 4/28/11)*

32.1.4 Cooperative Principle. 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. An important element of the cooperative principle requires that all individuals who are subject to NCAA rules protect the integrity of an investigation. A failure to do so may be a violation of the principles of ethical conduct. The enforcement staff will usually share information with the institution during an investigation; however, it is understood that the staff, to protect the integrity of the investigation, may not in all instances be able to share information with the institution. *(Adopted: 1/12/99)*

32.1.5 Definition of Involved Individual. Involved individuals are former or current student-athletes and former or current institutional staff members who have received notice of significant involvement in alleged violations through the notice of allegations or summary disposition process. *(Adopted: 4/24/03, Revised: 4/17/07)*

32.2 PRELIMINARY REVIEW OF INFORMATION

32.2.1 Enforcement Staff to Receive Complaints and Conduct Investigations. It is the responsibility of the enforcement staff to conduct investigations relative to an institution's failure to comply with NCAA legislation or to meet the conditions and obligations of membership. Information that an institution failed to meet these obligations shall be provided to the enforcement staff and, if received by the Committee on Infractions or NCAA president, will be channeled to the enforcement staff. *(Revised: 4/24/03)*

32.2.1.1 Staff Initiation of Investigation. The enforcement staff may initiate an investigation on its own motion when it receives information that an institution is, has been, or may have been in violation of NCAA legislation. *(Revised: 4/24/03, 4/10/06)*

32.2.1.2 Self-Disclosure by an Institution. Self-disclosure shall be considered in establishing penalties, and, if an institution uncovers a violation prior to its being reported to the NCAA and/or its conference, such disclosure shall be considered as a mitigating factor in determining the penalty. *(Revised: 10/12/94)*

32.2.2 Investigative Guidelines. The Committee on Infractions shall provide general guidance to the enforcement staff through approved and established investigative and procedural guidelines.

32.2.2.1 Initial Enforcement Staff Responsibilities. The enforcement staff is responsible for evaluating information reported to the NCAA staff to determine whether the possible violation should be handled by correspondence with the involved institution or its conference, or whether the enforcement staff should conduct its own in-person inquiries.

32.2.2.1.1 Basic Information Gathering. The enforcement staff has a responsibility to gather basic information regarding possible violations and, in doing so, may contact individuals to solicit information. If information indicating a potential NCAA violation believed to be reliable is developed, the procedures provided in Bylaw 32.5 (Notice of Inquiry) are undertaken. *(Revised: 4/24/03)*

32.2.2.1.2 Identification of Major/Secondary Violation. The enforcement staff shall identify information developed by it or self-reported by the institution as alleged major or secondary violations (as defined in Bylaw 19.02.2). The staff shall have the discretion to submit information to the Committee on Infractions, or a designated member of the Committee on Infractions, for an initial determination of how that information should be processed. *(Adopted: 4/24/03, Revised: 4/10/06)*

32.2.2.1.3 Matters Handled by Correspondence. Matters that clearly are secondary in nature should be handled promptly by correspondence with the involved institution. *(Revised: 4/24/03)*

32.3 INVESTIGATIVE PROCEDURES

32.3.1 Conformance with Procedures. Investigations by the enforcement staff shall be conducted in accordance with the operating policies, procedures and investigative guidelines established by the Committee on Infractions, the Board of Directors and membership in accordance with Bylaw 19. *(Revised: 11/1/07 effective 8/1/08)*

32.3.1.1 Consultation with Committee on Infractions. If questions arise concerning investigative procedures during the course of an investigation, the chair (or the full Committee on Infractions, if necessary) may be consulted by the enforcement staff. *(Adopted: 4/24/03)*

32.3.2 Timely Process. The enforcement staff shall make reasonable efforts to process infractions matters in a timely manner. *(Revised: 4/24/03)*

32.3.3 Conflict of Interest. Any enforcement staff member who has or had a personal relationship or institutional affiliation that reasonably would result in the appearance of prejudice should refrain from participating in any manner in the processing of the involved institution's or individual's infractions case. *(Adopted: 1/16/93)*

32.3.4 Interviews with Member Institution. The athletics director or other appropriate official of an institution shall be contacted by the enforcement staff in order to schedule interviews on the institution's campus with enrolled student-athletes, coaching staff members or other institutional staff members with athletically related responsibilities or oversight who are involved in possible violations at the institution. *(Revised: 4/24/03)*

32.3.4.1 Presence of Institutional Representative During Interview. If an interview with an enrolled student-athlete or athletics department staff member is conducted on the campus of an institution, an institutional representative(s) (as designated by the institution) will be permitted to be present during the interview, provided the subject matter to be discussed in the interview relates directly to the individual's institution or could affect the individual's eligibility or employment at the institution. If the investigator wishes to discuss information with a student-athlete or staff member that is related solely to institutions other than the one in which the student-athlete is enrolled or staff member is employed and would not reasonably affect the student's eligibility or the staff member's employment, the institutional representative shall not be present during that portion of the interview. In such a situation (after the institutional representative has departed), any information inadvertently reported by the student-athlete or the staff member that is related to his or her own institution shall not be used against the student-athlete, staff member or that institution. *(Revised: 4/24/03)*

32.3.4.2 Conflict with Academic Schedule. If possible, interviews should be conducted without disrupting the normally scheduled academic activities of the student-athlete. *(Revised: 4/24/03)*

32.3.5 Proper Identification of NCAA Staff Member. In no case shall an enforcement staff member misrepresent the staff member's identity or title.

32.3.6 Representation by Legal Counsel. When an enforcement staff member conducts an interview that may develop information detrimental to the interests of the individual being questioned, that individual may be represented by personal legal counsel throughout the interview.

32.3.7 Notice Requirements.

32.3.7.1 Disclosure of Purpose of Interview. When an enforcement representative requests information that could be detrimental to the interests of the student-athlete or institutional employee being interviewed, that individual shall be advised that the purpose of the interview is to determine whether the individual has knowledge of or has been involved directly or indirectly in any violation of NCAA legislation. *(Revised: 4/24/03, 4/10/06)*

32.3.7.2 Responsibility to Cooperate. At the beginning of an interview arranged or initiated by the enforcement staff, a current or former student-athlete or institutional employee shall be advised that refusing to furnish information or providing false or misleading information to the NCAA, conference or institution may result in an allegation that the individual has violated NCAA ethical conduct legislation (see Bylaw 10.1).

32.3.8 Limited Immunity.

32.3.8.1 Athletics Personnel. At the request of the enforcement staff, the Committee on Infractions may grant limited immunity to an institutional employee with responsibilities related to athletics based on information that the employee reports when such an employee otherwise would be subject to disciplinary action as described in Bylaws 19.5.1-(i) and 19.5.2-(k). Such immunity shall not apply to the employee's involvement in violations of NCAA legislation not reported or to future involvement in violations of NCAA legislation by the employee or to any action taken by an institution. In any case, such immunity shall not be granted unless the employee provides information not otherwise available to the enforcement staff. *(Revised: 10/12/94, 4/24/03, 4/28/11)*

32.3.8.2 Student-Athlete or Prospective Student-Athlete. At the request of the enforcement staff, the Committee on Infractions may grant limited immunity to a student-athlete or prospective student-athlete when such an individual otherwise might be declared ineligible for intercollegiate competition based on information reported to the enforcement staff by the individual or a third party associated with the individual. Such immunity shall not apply to the individual's involvement in violations of NCAA legislation not reported or to future involvement in violations of NCAA legislation by the individual or to any action taken by an institution. In any case, such immunity shall not be granted unless the relevant information would not otherwise be available to the enforcement staff. *(Adopted: 4/28/11)*

32.3.9 Interview Record.

32.3.9.1 Recordings. It is preferable that an interview conducted by the enforcement staff be recorded through the use of a mechanical device. If an interviewee objects to being recorded however, or the enforcement staff believes the use of a recording device would have an inhibiting effect on the interviewee, a summary of the information reported shall be prepared per Bylaw 32.3.9.2. *(Revised: 4/10/06, 6/11/07)*

32.3.9.1.1 Access to Recordings and Transcripts. Both the enforcement staff and the interviewee may record the interview or the interviewee may receive a copy of the recording and if prepared by the enforcement staff, the interview transcript, subject to the confidentiality provisions of Bylaws 32.3.9.1.4 and 32.3.9.2.1. Copies of recorded interview summaries and any report prepared by the enforcement staff are confidential and shall only be provided to interviewees (and their institutions) as set forth in Bylaws 32.3.9.2 and 32.6.4. *(Revised: 4/24/03, 4/10/06, 6/11/07, 8/7/08)*

32.3.9.1.2 Institutional Recording of an Interview—Access to Recordings and Transcripts. Interviews conducted in accordance with Bylaw 32.3.4.1 or jointly with the enforcement staff at any location, may be recorded by the institution under inquiry. If the institution is unable or chooses not to record such an interview, the institution may receive a copy of the enforcement staff's recording of the interview and/or a copy of the interview transcript, if prepared by the enforcement staff. Institutional recordings of NCAA interviews under any other circumstances must be approved by the Committee on Infractions. *(Adopted: 10/12/94)*

32.3.9.1.2.1 Access to Recordings and Transcripts by Conference. For interviews conducted in accordance with Bylaw 32.3.4.1 or jointly by the institution and enforcement staff, and on consent of the institution, a conference may receive a copy of the interview recording and/or transcript, if prepared by the enforcement staff or institution. *(Adopted: 6/11/07)*

32.3.9.1.3 Use of Court Reporters. Institutional representatives or individuals being interviewed may use a court reporter to transcribe and interview subject to the following conditions. The institution or individual shall:

- (a) Pay the court reporter's fees;
- (b) Provide a copy of the transcript to the enforcement staff at no charge; and
- (c) Agree that the confidentiality standards of Bylaw 32.3.9.1.4 apply. An institutional representative or individual who chooses to use a court reporter shall submit a written notice of agreement with the required conditions to the enforcement staff prior to the interview. If the enforcement staff chooses to use a court reporter, the NCAA will pay all costs of the reporter. A copy of the transcript prepared by the court reporter for the enforcement staff shall be made available to the institution and the involved individuals. *(Adopted: 4/24/03, Revised: 5/22/09)*

32.3.9.1.4 Statement of Confidentiality. Individuals and institutional representatives shall be required to agree not to release recordings or interview transcripts to a third party. A statement of confidentiality shall be signed or recorded prior to an interview. Failure to enter into such an agreement would preclude the individual or institutional representative from recording or transcribing the interview. *(Adopted: 4/23/03, Revised: 4/10/06)*

32.3.9.2 Nonrecorded Interviews. When an interview is not recorded or if the recording device malfunctions, the enforcement staff shall prepare a written summary of the information and attempt to obtain a signed affirmation of its accuracy from the interviewee. The interviewee shall be permitted to make additions or corrections to the memorandum before affirming its accuracy. In order to obtain the interviewee's signature, the enforcement staff may provide a copy of the unsigned summary to the interviewee and his or her counsel. After the summary is signed, the interviewee and his or her counsel may receive a signed copy. Testimony as to the substance of an unrecorded interview for which a signed affirmation was not obtained may nevertheless be considered by the Committee on Infractions to the extent the Committee on Infractions determines the testimony to be reliable. *(Revised: 4/24/03, 4/10/06, 8/7/08)*

32.3.9.2.1 Confidentiality of Nonrecorded Interview Documents. Copies of nonrecorded interview summaries and any report prepared by the enforcement staff are confidential and shall not be provided to individuals (or their institutions) who may be involved in reporting information during the processing of an infractions case except as set forth in Bylaws 32.3.9.2, 32.3.10 and 32.6.4. *(Revised: 4/24/03, 8/7/08)*

32.3.9.3 Handwritten Notes. It shall be permissible for all individuals involved in interviews conducted by the enforcement staff to take handwritten notes of the proceedings. *(Adopted: 4/23/03)*

32.3.10 Enforcement Staff's Responsibility to Maintain Case Information.

32.3.10.1 Case File. The enforcement staff is responsible for maintaining evidentiary materials involved with an infractions case, including copies of recorded interviews, interview summaries and/or interview transcripts and other evidentiary information. Such materials shall be retained on file at the national office. *(Adopted: 1/13/08 for all cases heard by the Committee on Infractions, unless not feasible due to security, format or technology issues)*

32.3.10.2 Secure Website. The enforcement staff shall make available copies of recorded interviews, interview summaries and/or interview transcripts and other evidentiary information pertinent to an infractions case. The institution and involved individuals may review such information in the national office or through a secure website in accordance with the provisions of Bylaw 32.6.4. *(Adopted: 1/13/08 for all cases heard by the Committee on Infractions, unless not feasible due to security, format or technology issues)*

32.3.11 Failure to Cooperate. In the event that a representative of an institution refuses to submit relevant information to the Committee on Infractions or the enforcement staff on request, a notice of inquiry may be filed with the institution alleging a violation of the cooperative principles of the NCAA bylaws and enforcement procedures. Institutional representatives and the involved individual may be requested to appear before the Committee on Infractions at the time the allegation is considered. *(Revised: 4/24/03)*

32.3.12 Meeting with Chancellor or President. The enforcement staff may meet personally with the chancellor or president or a designated representative of the involved institution to discuss the allegations investigated and information developed by the NCAA in a case that has been terminated. *(Revised: 4/24/03, 3/8/06)*

32.4 PROCESSING INFORMATION FOR SECONDARY VIOLATIONS

32.4.1 Authority of Conference Commissioners. Selected secondary violations that have been identified by the Committee on Infractions, and for which specific disciplinary or corrective actions have been prescribed by the Committee on Infractions, shall be processed by the institution's conference when such violations occur for the first time in a particular sport. Any violations processed and penalties imposed by the conference commissioner shall be reported to the NCAA enforcement staff on a quarterly basis. If an institution believes that a case warrants action that is less than the prescribed penalty, it may request further review by the vice president for enforcement services. *(Adopted: 10/21/97 effective 1/1/98, Revised: 4/24/03)*

32.4.2 Review of Institutional or Conference Actions or Penalties In Secondary Cases. If the Committee on Infractions or the enforcement staff, after review of institutional or conference action taken in connection with a rules infraction in a secondary case, concludes that the corrective or punitive measures taken by the institution or conference are sufficient, the Committee on Infractions or the enforcement staff may accept the self-imposed measures and take no further action. Failure to fully implement the self-imposed measures may subject the institution to further disciplinary action by the NCAA. *(Revised: 10/12/94, 4/24/03)*

32.4.2.1 Insufficient Actions. If the institutional or conference actions appear to be insufficient, the enforcement staff shall notify the institution of additional penalties in a secondary case. *(Revised: 10/12/94, 4/24/03)*

32.4.3 Action Taken by Enforcement Staff (Non-Institution or Non-Conference). If the enforcement staff, after reviewing the information that has been developed and after consulting with the institution involved, determines that a secondary violation has occurred, the enforcement staff may determine that no penalty is warranted or impose an appropriate penalty (see Bylaw 19.6.1). *(Revised: 4/24/03)*

32.4.4 Appeal of Secondary Cases. An institution may appeal penalties imposed by the enforcement staff for a secondary violation by submitting a written notice of appeal to the Committee on Infractions. The Committee on Infractions must receive the written notice of appeal and any supporting information within 30 days of the date the institution receives the enforcement staff's decision. An institution may request the opportunity to appear in person or through participation in a telephone conference call. If no such request is made, or if the request is denied, the Committee on Infractions will review the institution's appeal on the basis of the written record. *(Adopted: 1/12/99, Revised: 4/24/03)*

32.5 NOTICE OF INQUIRY

32.5.1 Notice to Institution. If the enforcement staff has developed reasonably reliable information indicating that an institution has been in violation of NCAA legislation that requires further investigation, the enforcement staff shall provide a notice of inquiry in writing to the chancellor or president unless the institution and enforcement staff have agreed to pursue the summary disposition process as set forth in Bylaw 32.7. The notice of inquiry shall advise the chancellor or president that the enforcement staff will engage in an investigation, that the investigation will be conducted under the direction of the vice president for enforcement services and that members of the enforcement staff if requested, shall meet in person with the chancellor or president to discuss the nature and details of the investigation, and the type of charges that appear to be involved. The notice of inquiry shall state that if the investigation develops significant information of a possible major violation, a notice of allegations will be produced in accordance with the provisions of Bylaw 32.6, or, in the alternative, the institution will be notified that the matter has been concluded. To the extent possible, the notice of inquiry also shall contain the following information: *(Adopted: 4/24/03, Revised: 3/8/06, 4/17/07)*

- (a) The involved sport;
- (b) The approximate time period during which the alleged violations occurred;
- (c) The identity of involved individuals;
- (d) An approximate time frame for the investigation;
- (e) A statement indicating that the institution and involved individuals may be represented by legal counsel at all stages of the proceedings;
- (f) A statement requesting that the individuals associated with the institution not discuss the case prior to interviews by the enforcement staff and institution except for reasonable campus communications not intended to impede the investigation of the allegations and except for consultation with legal counsel;
- (g) A statement indicating that other facts may be developed during the course of the investigation that may relate to additional violations; and
- (h) A statement regarding the obligation of the institution to cooperate in the case.

32.5.1.1 Status Notification within Six Months. The enforcement staff shall inform the involved institution of the general status of the inquiry within six months of the date after the chancellor or president receives the notice of inquiry from the enforcement staff. *(Adopted: 4/24/03, Revised: 3/8/06)*

32.5.1.2 Review After One Year. If the inquiry has not been processed to conclusion within one year of the date that the chancellor or president receives the notice of inquiry from the enforcement staff, the staff shall review the status of the case with the Committee on Infractions. The Committee on Infractions shall determine whether further investigation is warranted, and its decision shall be forwarded to the involved institution in writing. If the investigation is continued, additional status reports shall be provided to the institution in writing at least every six months thereafter, until the matter is concluded. *(Adopted: 4/24/03, Revised: 3/8/06)*

32.5.2 Termination of Investigation. The enforcement staff shall terminate the investigation related to any notice of inquiry in which information is developed that does not appear to be of sufficient substance or reliability to warrant a notice of allegations, it being understood that the Committee on Infractions shall review each such decision. *(Adopted: 4/24/03)*

32.6 NOTICE OF ALLEGATIONS

32.6.1 Notice to Chancellor or President. When the enforcement staff determines that there is sufficient information to warrant, it shall issue a cover letter and notice of allegations to the chancellor or president of the institution involved (with copies to the faculty athletics representative and the athletics director and to the executive officer of the conference of which the institution is a member). *(Revised: 4/24/03, 3/8/06)*

32.6.1.1 Contents of the Notice of Allegations Cover Letter. The cover letter accompanying each notice of allegations shall: *(Adopted: 4/24/03)*

- (a) Inform the president or chancellor of the matter under inquiry and request the cooperation of the institution in obtaining all the pertinent facts and provide specific information on how to investigate the allegation. *(Revised: 3/8/06)*

- (b) Request the president or chancellor to respond to the allegations and to provide all relevant information that the institution has or may reasonably obtain, including information uncovered related to new violations. The responsibility to provide information continues until the case has been concluded. *(Revised: 3/8/06)*
- (c) Request the president or chancellor and other institutional staff to appear before the Committee on Infractions at a time and place determined by the Committee on Infractions. *(Revised: 3/8/06)*
- (d) Inform the president or chancellor that if the institution fails to appear after having been requested to do so, it may not appeal the committee's findings of fact and violations, or the resultant penalty. *(Revised: 3/8/06)*
- (e) Direct the institution to provide any involved individual the opportunity to submit in writing any information the individual desires that is relevant to the allegation in question. *(Revised: 5/22/09)*
- (f) Inform the president or chancellor that the enforcement staff's primary investigator in the case will be available to discuss the development of its response and assist in locating various individuals who have, or may have, important information regarding the allegations. *(Revised: 3/8/06)*

32.6.1.1.1 Enforcement Staff Basis for Allegation. The enforcement staff shall allege a violation when it believes there is sufficient information to conclude that the Committee on Infractions could make a finding. *(Adopted: 4/24/03)*

32.6.1.2 Contents of Notice of Allegations. The notice shall list the NCAA legislation alleged to have been violated, as well as the details of each allegation. *(Adopted: 4/24/03)*

32.6.2 Notice to Involved Individuals. The enforcement staff shall notify involved individuals (as defined in Bylaw 32.1.5) of the allegations in a notice of allegations in which they are named. A copy of the notification shall also be forwarded to the chancellor or president of the current institution of the involved individual. All involved individuals shall submit responses to the Committee on Infractions, and the institution under inquiry shall provide a copy of pertinent portions of its response to each involved individual in the case. Involved individuals who have submitted a response must also share their response with the involved institutions or other involved individuals as necessary. Failure to submit a response may be viewed by the Committee on Infractions as an admission that the alleged violations occurred. The enforcement staff shall notify those involved individuals named in the notice of allegations who may be subject to the show-cause requirements as outlined in Bylaw 19.5.2.2 if violations are found in which they are named. *(Adopted: 4/24/03, Revised: 3/8/06, 4/10/06, 6/11/07, 1/17/09)*

32.6.3 Statute of Limitations. Allegations included in a notice of allegations shall be limited to possible violations occurring not earlier than four years before the date the notice of inquiry is forwarded to the institution or the date the institution notifies (or, if earlier, should have notified) the enforcement staff of its inquiries into the matter. However, the following shall not be subject to the four-year limitation: *(Revised: 10/12/94, 4/24/03)*

- (a) Allegations involving violations affecting the eligibility of a current student-athlete;
- (b) Allegations in a case in which information is developed to indicate a pattern of willful violations on the part of the institution or individual involved, which began before but continued into the four-year period; and
- (c) Allegations that indicate a blatant disregard for the Association's fundamental recruiting, extra-benefit, academic or ethical-conduct regulations or that involve an effort to conceal the occurrence of the violation. In such cases, the enforcement staff shall have a one-year period after the date information concerning the matter becomes available to the NCAA to investigate and submit to the institution a notice of allegations concerning the matter.

32.6.4 Access to Information Through Secure Website. The institution and involved individuals shall have reasonable access to all pertinent evidentiary materials as described in Bylaw 32.3.10.2. Such information shall be made available within 30 days from the date the notice of allegations is sent by the enforcement staff to the institution and involved individuals. *(Adopted: 1/16/93, Revised: 10/12/94, 4/24/03, 1/13/08 for all cases heard by the Committee on Infractions, unless not feasible due to security, format or technology issues)*

32.6.4.1 Additions to Secure Website. Additions made to a secure website more than 30 days after the notice of allegations is sent to the institution and involved individuals shall be limited to exculpatory information and/or new information that could not be reasonably ascertained prior to the date the notice of allegations was sent. The enforcement staff shall notify the institution and involved individuals of the availability of the additional information. *(Adopted: 1/13/08 for all cases heard by the Committee on Infractions, unless not feasible due to security, format or technology issues)*

32.6.5 Deadline for Responses. Any response to the notice of allegations shall be on file with the Committee on Infractions, the institution, all involved individuals and the enforcement staff not later than 90 days from the date of the notice of allegations, unless the Committee on Infractions grants an extension. The enforcement staff may establish a deadline for the submission of responses to any reasonable time within the 90-day period, provided the institution and all involved individuals consent to the expedited deadline. An institution or involved individual may not submit additional documentary evidence (in addition to its initial response) without prior authorization from the Committee on Infractions (see Bylaw 32.6.8 for additional instructions regarding information submitted to the Committee on Infractions). *(Revised: 1/16/93, 4/24/03, 4/10/06, 1/13/08)*

32.6.6 Prehearing Conference. Within 30 days of an institution's submission of its written response to the notice of allegations, in a case involving an alleged major violation, the enforcement staff shall consult with institutional representatives and other involved individuals who will attend the hearing in order to clarify the issues to be discussed in the case during the hearing, make suggestions regarding additional investigation or interviews that should be conducted by the institution to supplement its response and identify allegations that the staff intends to withdraw. The enforcement staff shall conduct independent prehearings with the institution and/or any involved individuals, unless mutually agreed by all parties to do otherwise. *(Revised: 1/16/93, 10/12/94, 4/24/03)*

32.6.6.1 Extension. The Committee on Infractions may approve additional time for representatives of the involved individuals and institution and the enforcement staff to conduct such prehearing conferences. *(Adopted: 1/16/93)*

32.6.7 NCAA Enforcement Staff Case Summary. The enforcement staff shall prepare a summary of the case that indicates the status of each allegation and identifies the individuals on whom and the information on which the staff will rely in presenting the case. Within 14 days prior to the hearing, the case summary shall be provided to the members of the Committee on Infractions and to representatives of the institution. Involved individuals will be provided those portions of the summary in which they are identified as at risk. The Committee on Infractions may waive this 14-day period for good cause shown. *(Adopted: 10/12/94, 4/24/03)*

32.6.8 Deadline for Submission of Written Material. Unless specifically approved by the Committee on Infractions for good cause shown, all written material to be considered by the Committee on Infractions at the infractions hearing must be received by the Committee on Infractions, enforcement staff, institution and any involved individuals attending the hearing not later than 10 days prior to the date of the hearing. Evidence may be submitted at the hearing; but subject to the limitations set forth in Bylaw 32.8.7.4. *(Revised: 4/24/03)*

32.6.9 Prehearing Procedural Issues. The chair of the Committee on Infractions (or his or her designee) has the authority to resolve procedural matters that arise prior to an infractions hearing. *(Adopted: 1/13/08)*

32.7 SUMMARY DISPOSITION AND EXPEDITED HEARING

32.7.1 Summary Disposition Election. In major infractions cases, institutions, involved individuals and the enforcement staff may elect to process the case through the summary disposition procedures specified below. The enforcement staff, involved individuals, if participating, and the institution must agree to use the summary disposition process. *(Adopted: 1/16/93, Revised: 4/22/98, 6/11/07, 8/12/10)*

32.7.1.1 Thorough Investigation. The Committee on Infractions shall determine that a thorough investigation of possible violations of NCAA legislation has been conducted. The investigation may be conducted by the enforcement staff and/or the institution, but the enforcement staff must agree that a complete and thorough investigation has been conducted and that the institution fully cooperated in the process. *(Adopted: 1/16/93)*

32.7.1.2 Written Report. The institution, involved individuals and the enforcement staff shall submit a written report setting forth: *(Adopted: 1/16/93)*

- (a) The proposed findings of fact;
- (b) A summary of information on which the findings are based;
- (c) A stipulation that the proposed findings are substantially correct;
- (d) The findings that are violations of NCAA legislation; and
- (e) A statement of unresolved issues that are not considered substantial enough to affect the outcome of the case.

32.7.1.3 Proposed Penalties. The institution and involved individuals shall submit proposed penalties within the guidelines set forth in the penalty structure for major violations specified in Bylaw 19.5.2. The institution and involved individuals also may submit a statement regarding mitigating factors. *(Adopted: 1/16/93)*

32.7.1.4 Committee on Infractions Review. The Committee on Infractions shall consider the case during its next scheduled meeting. *(Adopted: 1/16/93)*

32.7.1.4.1 Approval of Findings and Penalties. If the agreed-on findings and proposed penalties are approved, the Committee on Infractions shall prepare a written report, forward it to the institution and involved individuals and publicly announce the resolution of the case under the provisions of Bylaw 32.9. *(Adopted: 1/16/93)*

32.7.1.4.2 Findings Not Approved. If the Committee on Infractions does not approve the findings, the hearing process set forth in Bylaws 32.8 and 32.9 shall be followed. *(Adopted: 1/16/93, Revised: 6/11/07)*

32.7.1.4.3 Penalties Not Approved. If the Committee on Infractions accepts the agreed-on findings but proposes penalties in addition to those set forth in the summary disposition report, the institution and/or involved individuals may request an expedited hearing on penalties before the Committee on Infractions. The committee shall only consider information relevant to the imposition of penalties during the expedited hearing. At the conclusion of the expedited hearing, the committee shall prepare a written report and provide notification of the committee's actions consistent with Bylaw 32.9. The institution and/or any involved individuals may appeal the additional penalties to the Infractions Appeals Committee in accordance with Bylaws 32.10 and 32.11. *(Adopted: 1/16/93, Revised: 6/11/07, 8/7/08)*

32.7.1.4.4 Additional Information or Clarification. The Committee on Infractions may contact jointly the institution, enforcement staff and involved individuals for additional information or clarification prior to accepting or rejecting the proposed findings. *(Revised: 6/11/07)*

32.7.1.4.5 Authority to Amend Findings. The Committee on Infractions has the authority to make editorial or nonsubstantive changes in the proposed findings as long as these changes do not affect the substance of the findings.

32.8 COMMITTEE ON INFRACTIONS HEARINGS

32.8.1 Committee Authority. The Committee on Infractions shall hold a hearing to determine the existence of the alleged violation of NCAA regulations and to impose any appropriate penalties. *(Adopted: 4/24/03)*

32.8.2 Determination of Meeting Date. The Committee on Infractions shall set the dates and times for all hearings before the committee. The committee shall notify all relevant parties of the hearing date and site. *(Adopted: 4/24/03)*

32.8.3 Limitations on Presentation of Staff Evidence. In major cases requiring an institutional hearing before the Committee on Infractions or when processing a case through means of a summary disposition, specific information and evidence developed by the staff related to alleged violations of NCAA legislation shall not be presented to the committee prior to the institution's appearance, except as provided in these procedures. *(Adopted: 4/24/03)*

32.8.4 Obligation to Provide Full Information. At any appearance before the Committee on Infractions, the involved institution and the enforcement staff, to the extent reasonably possible, have the obligation to ensure that the Committee on Infractions has benefit of full information concerning each allegation, whether such information corroborates or refutes an allegation. *(Adopted: 4/24/03)*

32.8.5 Notification of Hearing Procedures. An institution and involved individuals shall be advised in writing prior to an appearance before the committee of the general procedures to be followed during the hearing. Such notification shall contain a specific reference to Bylaw 32.8 and shall indicate that, as a general rule, the discussion during the hearing will follow the numbering of the allegations in the notice of allegations. *(Adopted: 4/24/03)*

32.8.6 Appearance of Individuals at Hearings.

32.8.6.1 Request for Specific Individuals. Institutional officials, staff members or enrolled student-athletes who are specifically requested to appear before the Committee on Infractions at an institutional hearing are expected to appear in person and may be accompanied by personal legal counsel. The Committee on Infractions also may request that former institutional staff members appear at a hearing. Such individuals also are expected to appear in person and may be accompanied by personal legal counsel. Failure to attend may result in a violation of this bylaw in a show-cause action by the Committee on Infractions.

32.8.6.2 Attendance at Hearings. At the time the institution appears before the Committee on Infractions, its representatives should include the institution's chancellor or president, the head coach of the sport in question, the institution's director of athletics, legal counsel, enrolled student-athletes whose eligibility could be affected by information presented at the hearing and any other representatives whose attendance has been requested by the Committee on Infractions. Additional individuals may be included among the institution's party only if specifically approved to be present by the Committee on Infractions. An individual who appears before the Committee on Infractions may appear with personal legal counsel. *(Revised: 4/24/03, 3/8/06)*

32.8.6.3 Exclusion of Individuals from Hearings.

32.8.6.3.1 Exclusions Requested by the Institution. At the request of the institution, the Committee on Infractions may exclude an individual from certain portions of the hearing when the matters to be discussed are not those in which the individual is at risk. When an individual is excluded from the hearing room for a period of time, it shall be with the understanding that matters discussed in the hearing during that time will not relate to that individual. *(Revised: 4/24/03)*

32.8.6.3.2 Limited Attendance of Student-Athletes. Any student-athlete (and personal legal counsel) included among the institution's representatives may attend the hearing only during the discussion of the allegations in which the student-athlete is involved.

32.8.6.4 Representation of Member Conference. The executive officer or other representative of a conference's executive office may attend an institutional hearing involving a conference member. *(Revised: 4/24/03)*

32.8.6.5 Prohibited Attendee. A member of the Committee on Infractions or the Infractions Appeals Committee who is prohibited under the provisions of Bylaw 32.1.3 from participating in any NCAA proceedings may not attend a Committee on Infractions hearing involving the committee member's institution unless specifically requested by the Committee on Infractions to be present as a witness.

32.8.6.6 Designation of Presentation Coordinators. The chair shall request each institution appearing before the Committee on Infractions to select one person to coordinate institutional responses during the hear-

ing. In addition, one individual from the enforcement staff will be responsible for coordinating the presentation of the enforcement staff.

32.8.7 Hearing Procedures. The exact procedure to be followed in the conduct of the hearing will be determined by the Committee on Infractions.

32.8.7.1 Opening and Closing Statements. At the outset of the hearing, a representative of the institution shall make an opening statement, followed by an opening statement from any involved individual and by a representative of the enforcement staff. The contents of such a statement should not relate to the substance of the specific items contained in the notice of allegations. Statements concerning the nature or theory of the case are encouraged. An institutional representative and involved individuals also may make a closing statement at the conclusion of the hearing, followed by a closing statement by a representative of the enforcement staff. *(Revised: 4/24/03)*

32.8.7.2 Staff Presentation. During the hearing, the enforcement staff first shall present the information that its investigation has developed.

32.8.7.3 Institutional or Involved Individual's Presentation. The institution and involved individual then will present their explanation of the alleged violations and any other arguments or information deemed appropriate in the Committee on Infractions' consideration of the case. *(Revised: 4/24/03)*

32.8.7.4 Type of Information. Any oral or documentary information may be received, but the Committee on Infractions may exclude information that it determines to be irrelevant, immaterial or unduly repetitious.

32.8.7.4.1 Information from Confidential Sources. In presenting information and evidence for consideration by the Committee on Infractions during an infractions hearing, the enforcement staff shall present only information that can be attributed to individuals who are willing to be identified. Information obtained from individuals not wishing to be identified shall not be relied on by the Committee on Infractions in making findings of violations. Such confidential sources shall not be identified to either the Committee on Infractions or the institution.

32.8.7.4.2 Information Concerning Mitigating Factors. Institutional, conference and enforcement staff representatives and any involved individuals are encouraged to present all relevant information concerning mitigating or other factors that should be considered in arriving at appropriate penalties. *(Revised: 4/24/03)*

32.8.7.5 Scope of Inquiry. If an institution appears before the Committee on Infractions to discuss its response to the notice of allegations, the hearing shall be directed toward the allegations set forth in the notice of allegations but shall not preclude the committee from finding any violation resulting from information developed or discussed during the hearing. *(Revised: 4/24/03)*

32.8.7.6 Committee on Infractions Questioning. The Committee on Infractions, at the discretion of any of its members, shall question representatives of the institution or the enforcement staff, as well as any involved individuals or other persons appearing before it, in order to determine the facts of the case. Further, under the direction of the Committee on Infractions, questions and information may be exchanged between and among all parties participating in the hearing. *(Revised: 5/22/09)*

32.8.7.7 Recording of Proceedings. The proceedings of infractions hearings shall be recorded by a court reporter (unless otherwise agreed) and shall be recorded by the Committee on Infractions. No additional verbatim recording of these proceedings will be permitted by the Committee on Infractions. The Committee on Infractions shall maintain custody of the recordings and any transcriptions. In the event of an appeal, a transcript of the hearing proceedings shall be reproduced and submitted to the Infractions Appeals Committee and made available for review at the NCAA national office or through a secure website. [Note: Involved individuals will receive only those portions of the hearing transcripts in which they were in attendance at the hearing.] *(Revised: 1/16/93, 4/24/03, 4/10/06)*

32.8.8 Posthearing Committee Deliberations. After all presentations have been made and the hearing has been concluded, the Committee on Infractions shall excuse all others from the hearing, and the Committee on Infractions shall make its determinations of fact and violation in private.

32.8.8.1 Request for New Information. In arriving at its determinations, the Committee on Infractions may request additional information from any source, including the institution, the enforcement staff or an involved individual. In the event that new information is requested from the institution, the enforcement staff or an involved individual to assist the Committee on Infractions, all parties will be afforded an opportunity to respond at the time such information is provided to the Committee on Infractions. *(Revised: 6/11/07)*

32.8.8.2 Request for Interpretation. The Committee on Infractions may confidentially request that the academic and membership affairs staff provide an interpretation of applicable legislation based on facts submitted by the Committee on Infractions. *(Adopted: 4/28/11)*

32.8.8.3 Basis of Findings. The Committee on Infractions shall base its findings on information presented to it that it determines to be credible, persuasive and of a kind on which reasonably prudent persons rely in the conduct of serious affairs.

32.8.8.4 Imposition of Penalty. If the Committee on Infractions determines that there has been a violation, it shall impose an appropriate penalty (see Bylaw 19.5); or it may recommend to the Board of Directors suspension or termination of membership in an appropriate case. Failure to fully implement the adopted and/or imposed penalty may subject the institution, and/or involved individual under a show-cause restriction, to further disciplinary action by the Committee on Infractions. *(Revised: 4/24/03, 4/28/11)*

32.8.8.5 Voting Requirements. The finding of a violation or the imposition of a penalty or recommended action shall be by majority vote of the members of the Committee on Infractions present and voting. If fewer than eight members are present, any Committee on Infractions action requires a favorable vote of at least four committee members. *(Revised: 10/12/94)*

32.9 NOTIFICATION OF COMMITTEE ON INFRACTIONS ACTION

32.9.1 Infractions Report. The Committee on Infractions, without prior public announcement, shall be obligated to submit promptly an infractions report, to the chancellor or president of the institution (with copies to those individuals receiving copies of the notice of allegations) and to all involved individuals, as defined in Bylaw 32.1.5. The following procedures shall apply to the infractions report: *(Revised: 4/24/03, 3/8/06, 1/13/08)*

- (a) After an institutional hearing, the Committee on Infractions shall prepare and approve the final infractions report; *(Revised: 10/12/94)*
- (b) The infractions report(s) of the Committee on Infractions and the Infractions Appeals Committee shall contain a consolidated statement of all findings and penalties, corrective actions, requirements, and other conditions and obligations of membership imposed on an institution found in violation of NCAA legislation. The statement of such actions shall include, but not be limited to, the penalties imposed on the institution, eligibility rules to be applied, applicable executive regulations, the adjustment of individual and team standings in NCAA championship events, and the request for the return of any awards and net receipts received for participation in an NCAA championship; and *(Revised: 10/12/94, 4/24/03, 1/13/08)*
- (c) The committee's infractions report shall be sent to the chancellor or president of the involved institution and any involved individuals under the chair's signature or under the signature of a committee member selected to act for the chair. In addition, the committee will notify all involved individuals directly of the appeal opportunities outlined in Bylaws 32.9 and 32.10. The report shall be sent by overnight mail service, and the committee's administrator shall confirm receipt by the institution and involved individuals in order that the 15-day appeal period applicable to this report may be established. *(Revised: 10/12/94, 3/8/06, 1/13/08)*

32.9.2 Release to Media. Once the infractions report has been received by the institution and involved individuals, the report, with names of individuals deleted, shall be made available to the national wire services and other media outlets. *(Revised: 1/13/08)*

32.9.2.1 Public Comment Prior to Release. The Committee on Infractions' public announcement related to an infractions case shall be made available to the national wire services and other media outlets. In this regard, the involved institution and/or any involved individuals shall be advised of the text of the announcement prior to its release and shall be requested not to comment publicly concerning the case prior to the time the NCAA's public announcement is released. *(Revised: 4/24/03)*

32.9.2.2 Public Announcement and Comment at Release. The chair or a member of the Committee on Infractions shall make the committee's public announcement related to major infractions when the committee determines that an announcement is warranted in addition to distribution of the written report. *(Adopted: 1/16/93)*

32.9.3 Report to Infractions Appeals Committee. The Committee on Infractions shall forward a copy of the report, with names of individuals deleted, to the Infractions Appeals Committee at the time of the public announcement. *(Adopted: 1/13/08)*

32.10 APPEAL PROCEDURE

32.10.1 Notice of Intent to Appeal. A notice of intent to appeal must be presented in writing to the Infractions Appeals Committee not later than 15 calendar days from the date of the public release of the Committee on Infractions' public infractions report. The notice of intent to appeal shall contain a statement identifying the date of the public release of the committee's report and a statement indicating whether the appealing party desires to submit its appeal in writing only or requests an in-person oral argument before the Infractions Appeals Committee. *(Revised: 1/16/93, 1/10/95, 4/26/95, 4/24/03, 1/13/08, 4/28/11)*

32.10.1.1 Appeal by Institution. The institution may appeal the Committee on Infractions' findings and penalties, corrective actions, requirements and/or other conditions and obligations of membership imposed for violations of NCAA legislation. An institution may not request an in-person oral argument before the Infractions Appeals Committee unless the institution has made an in-person appearance before the Committee on Infractions. *(Adopted: 1/13/08, Revised: 4/28/11)*

32.10.1.2 Appeal by Involved Individual. An involved individual may appeal the Committee on Infractions' findings and/or show-cause order imposed for violations of NCAA legislation in which he or she is named. An involved individual may not request an in-person oral argument before the Infractions Appeals Committee unless the involved individual has made an in-person appearance before the Committee on Infractions. The notice of the appeal must state whether the individual is employed at an NCAA institution (regardless of division). Further, if the individual's employment changes during the course of the appellate process (from the time of the submission of the notice of appeal through the release of the final Infractions Appeals Committee report), the individual must notify the Infractions Appeals Committee of the change, including the identity of the new employer. *(Adopted: 1/13/08, Revised: 10/29/09, 4/28/11)*

32.10.2 Committee on Infractions' Response to an Appeal. The Committee on Infractions shall submit a response to the Infractions Appeals Committee on each case that has been appealed. This response shall include: *(Revised: 1/16/93, 10/12/94, 1/10/98, 4/11/01, 4/24/03, 1/13/08)*

- (a) A statement of the origin of the case;
- (b) The violations of the NCAA Constitution and bylaws, as determined by the Committee on Infractions; *(Revised: 10/12/94)*
- (c) Disciplinary or corrective actions taken by the institution or conference or any other agency involved in the particular incident;
- (d) A statement of the Committee on Infractions' penalties, corrective actions, requirements and other conditions and obligations of membership imposed for violations of NCAA legislation; *(Revised: 1/13/08)*
- (e) The issues raised in the appeal;
- (f) The Committee on Infractions' responses to the issues raised in the appeal; and
- (g) A transcript of any hearing conducted by the Committee on Infractions (submitted as an attachment to the response). *(Adopted: 10/12/94, Revised: 1/13/08)*

32.10.3 Enforcement Staff Information. The enforcement staff may provide written information to the Infractions Appeals Committee regarding perceived new information, errors, misstatements and omissions relating to the written appeal, Committee on Infractions' response and/or rebuttal documents, as long as any such written information is received by the Infractions Appeals Committee not later than 10 calendar days from notification from the Infractions Appeals Committee of whether rebuttal materials have been submitted as established under the policies and procedures of the Infractions Appeals Committee. *(Adopted: 1/13/08, Revised: 1/13/09)*

32.10.4 Basis for Granting an Appeal.

32.10.4.1 Penalties. A penalty determined by the Committee on Infractions shall not be set aside on appeal except on a showing by the appealing party that the penalty is excessive such that it constitutes an abuse of discretion. *(Adopted: 1/13/08)*

32.10.4.2 Findings. Findings of violations made by the Committee on Infractions shall not be set aside on appeal, except on a showing by the appealing party that: *(Adopted: 1/13/08)*

- (a) A finding is clearly contrary to the evidence presented to the Committee on Infractions;
- (b) The facts found by the Committee on Infractions do not constitute a violation of the Association's rules; or
- (c) There was a procedural error and but for the error, the Committee on Infractions would not have made the finding of violation.

32.10.5 New Evidence. In making a determination pursuant to Bylaw 32.10.4, the Infractions Appeals Committee shall consider only the information contained in the record(s) of proceedings before the Committee on Infractions and the record on appeal. If an institution or involved individual seeks to introduce information during the appeals process that was not presented to the Committee on Infractions for its consideration, the Infractions Appeals Committee shall: *(Adopted: 1/6/96)*

- (a) Determine whether the information is "new evidence" per Bylaw 19.02.3. If the Infractions Appeals Committee determines that the information meets the definition of "new evidence" per Bylaw 19.02.3, the Infractions Appeals Committee, after input from a Committee on Infractions' designee, shall determine whether the "new evidence" could have materially affected any decision made by the Committee on Infractions, and if so the case shall be referred back to the Committee on Infractions for its review. If the information does not meet the definition of "new evidence" per Bylaw 19.02.3 or if the "new evidence" would not have materially affected a decision made by the Committee on Infractions, the information shall not be included in the record on appeal and shall not be considered by the Infractions Appeals Committee; and *(Revised: 1/13/08)*
- (b) Enter findings in the record on appeal regarding all decisions made pursuant to Bylaw 32.10.5-(a). *(Adopted: 1/13/08)*

32.10.6 Determination of Appeal Procedures. The specific procedures to be followed during the written appeals process will be determined by the Infractions Appeals Committee. *(Adopted: 1/13/08)*

32.11 ORAL ARGUMENTS

32.11.1 Oral Argument Procedures. An institution or involved individual may appeal the Committee on Infractions' findings of violations and penalties, corrective actions, requirements, and other conditions and obligations of membership imposed by the Committee on Infractions for violations of NCAA legislation. Should one or more of the parties request an oral argument, the oral argument will be conducted according to the following procedures: *(Revised: 1/16/93, 1/10/95, 4/24/03, 1/13/08, 4/28/11)*

- (a) Consistent with the requirements of Bylaw 32.10.1, if the institution and/or involved individual elects to be represented in person before the Infractions Appeals Committee, the institution and/or involved individual shall be permitted a reasonable time to make its oral presentation to supplement the written appeal. The coordinator of appeals or another member of the Committee on Infractions then shall be permitted a reasonable time to make its oral presentation. The period of time for the presentation by the institution, involved individual and the Committee on Infractions shall be left to the discretion of the chair of the Infractions Appeals Committee; *(Revised: 1/10/95, 4/24/03, 1/13/08)*
- (b) The enforcement staff may elect to be represented in person by a maximum of three persons, and may participate during the oral argument. Any participation by the enforcement staff shall be limited to the opportunity to provide information regarding perceived new information, errors, misstatements and omissions. *(Adopted: 1/13/08, Revised: 4/28/11)*
- (c) If an institution or involved individual appeared before the Committee on Infractions but waived the right to appeal, the institution or involved individual may elect to be present in person and/or by counsel, by a maximum of three persons, as a silent observer during the oral argument before the Infractions Appeals Committee. *(Adopted: 1/14/08, Revised: 4/28/11)*
- (d) If the institution or involved individual elects to appeal in writing only, the Committee on Infractions' written response specific to that written appeal shall be considered without an in-person appearance by a Committee on Infractions representative; and *(Revised: 1/14/08, 1/13/08)*
- (e) Consistent with Bylaw 32.10.2, the Infractions Appeals Committee then shall act on the institution's and/or involved individual's appeal, by majority vote of the members of the Infractions Appeals Committee present and voting, and may affirm, reverse or vacate and remand the Committee on Infractions' findings of violations, penalties, corrective actions, requirements, and/or other conditions and obligations of membership imposed for violations of NCAA legislation. *(Revised: 8/2/91, 1/10/95, 1/6/96, 4/24/03, 1/13/08)*

32.11.2 Consideration by Infractions Appeals Committee. The Infractions Appeals Committee shall consider the statements and evidence presented and, at the discretion of any of its members, may question representatives of the institution, the Committee on Infractions or enforcement staff, as well as any other persons appearing before it, in order to determine the issues related to the appeal. Further, under the direction of the Infractions Appeals Committee, questions and information may be exchanged between and among those individuals present and participating in the oral argument. *(Revised: 1/16/93, 1/10/95, 4/24/03, 1/13/08, 4/28/11)*

32.11.3 Infractions Appeals Committee—Determination of Oral Argument Procedures. The procedure to be followed in the conduct of the oral argument will be determined by the Infractions Appeals Committee, but shall be consistent with the operating policies and procedures that apply to hearings conducted by the Committee on Infractions. *(Revised: 1/16/93, 1/10/95, 4/24/03, 1/13/08, 11/1/07 effective 8/1/08, 4/28/11)*

32.11.4 Decision Final. Any decision in an infractions case by the Infractions Appeals Committee shall be considered final. *(Revised: 1/16/93, 1/10/95, 4/24/03)*

32.11.5 Further Review. Determinations of fact and violations arrived at in the foregoing manner by the Committee on Infractions or by the Infractions Appeals Committee, on appeal, shall be final, binding and conclusive and shall not be subject to further review by the Leadership Council or any other authority. *(Revised: 1/16/93, 1/10/95, 4/24/03, 11/1/07 effective 8/1/08)*

FIGURE 32-1
Processing of a Typical NCAA Infractions Case

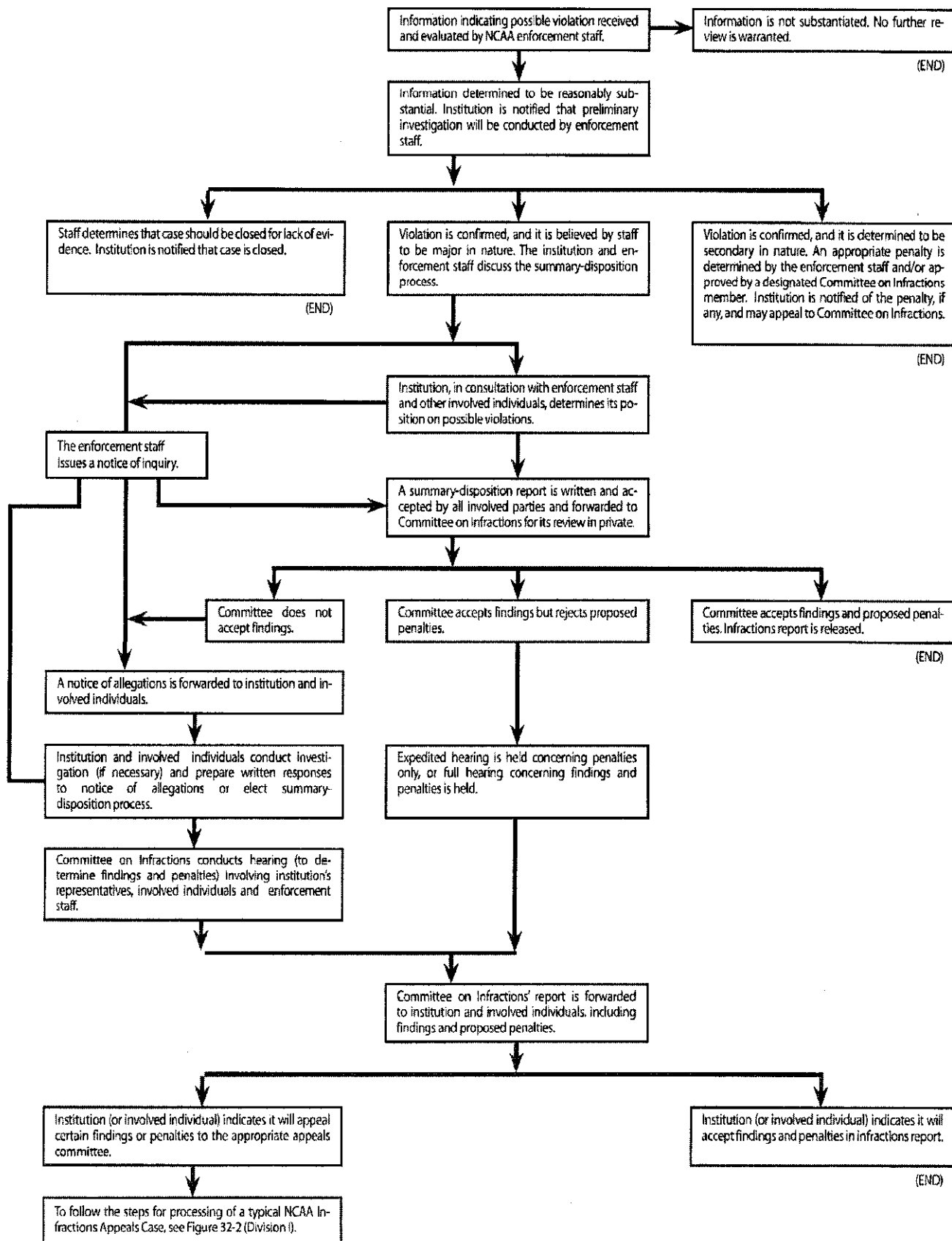


FIGURE 32-2
Processing of a Typical NCAA Infractions Appeals Case

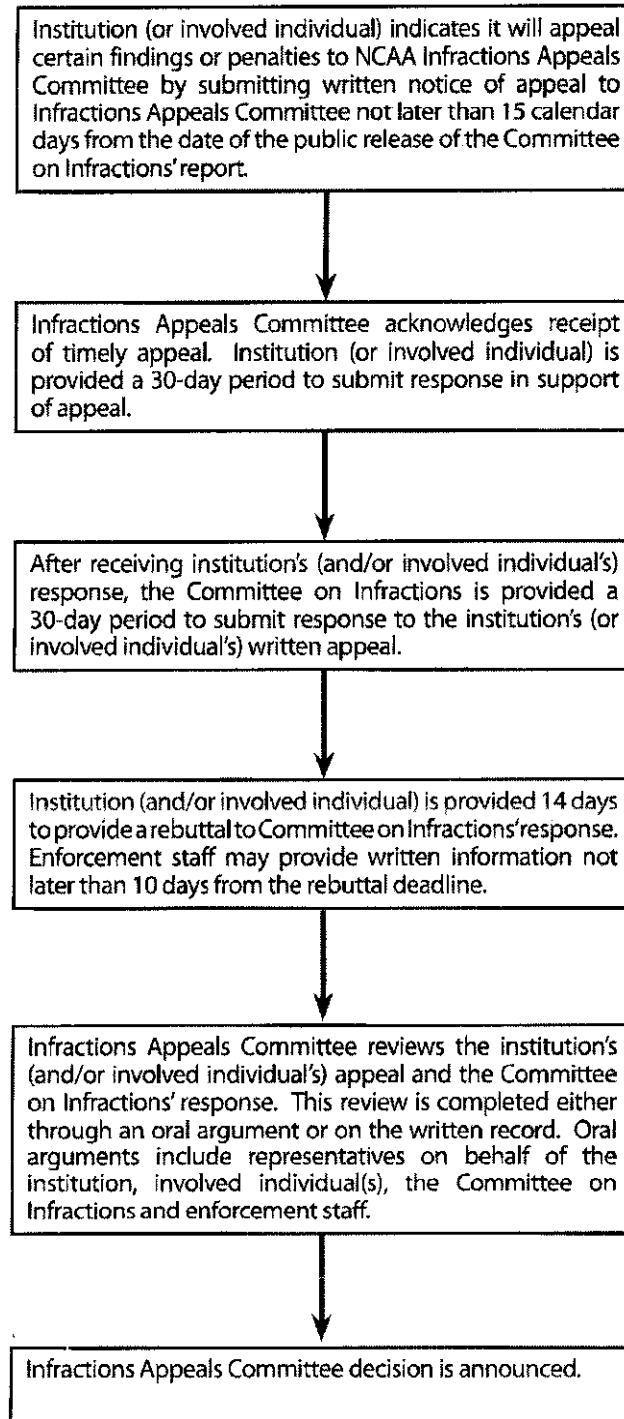


Exhibit 7

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,
PENNSYLVANIA
CIVIL ACTION – LAW

ESTATE of JOSEPH PATERNO;

and

WILLIAM KENNEY and JOSEPH V. ("JAY")
PATERNO, former football coaches at
Pennsylvania State University,
Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION ("NCAA"),

MARK EMMERT, individually and as
President of the NCAA, and

EDWARD RAY, individually and as former
Chairman of the Executive committee of the
NCAA,

Defendants,

and

THE PENNSYLVANIA STATE
UNIVERSITY,

Nominal Defendant.

) **Docket No.:** 2013-2082

)

) **Type of Case:**

) Declaratory Judgment Injunction

) Breach of Contract

) Tortious Interference with Contract

) Defamation

) Commercial Disparagement

) Conspiracy

)

) **Type of Pleading:**

) NCAA's Objections to

) Plaintiffs' Proposed Subpoena

)

) **Filed on Behalf of:**

) National Collegiate Athletic

) Association, Mark Emmert, Edward

) Ray

)

) **Counsel of Record for this**

) **Party:**

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) FAX: (717) 238-0592

) tscott@killiangephart.com

) PA I.D. Number: 15681

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**IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY,
PENNSYLVANIA**

ESTATE of JOSEPH PATERNO, et al.,)	
)	
Plaintiffs,	)	Civil Division
)	
v.)	
)	
NATIONAL COLLEGIATE ATHLETIC	)	Docket No. 2013-
ASSOCIATION, et al.,	)	2082
)	
Defendants.)	

**NCAA OBJECTIONS TO PLAINTIFFS' PROPOSED SUBPOENA
PURSUANT TO RULE 4009.21**

Pursuant to Rule 4009.21(c) of the Pennsylvania Rules of Civil Procedure, the National Collegiate Athletic Association (the "NCAA"), by its counsel, objects to the document and deposition subpoena Plaintiffs have proposed to serve on Britton Banowsky, attached hereto as Ex. A.

1. On January 29, 2016, Plaintiffs served the NCAA with a notice of intent to subpoena a third party, Britton Banowsky, for documents and a deposition. Until recently, Mr. Banowsky was the Commissioner of Conference USA, an NCAA

member conference. He is currently a member of the NCAA Committee on Infractions. In July 2012, he chaired that committee.¹ He is not an employee or officer of the NCAA.

2. The Division I Committee on Infractions (“COI”) is an independent administrative body that, among other things, finds facts related to alleged NCAA bylaw violations brought forth by the Enforcement Staff, concludes whether those violations have occurred, and then prescribes and monitors issued penalties related to those violations. The COI comprises individuals serving as volunteers from NCAA member institutions and conferences and individuals from the general public who have legal training. As Plaintiffs have alleged—and the evidence makes clear—the COI had no part in developing, negotiating, or executing the Consent Decree between the NCAA and Penn State.

3. The NCAA objects to the issuance of the subpoena because it does not seek information that is “relevant to the subject matter involved in the pending action.” *See* Pa.R.C.P. 4003.1(a). Instead, the subpoena would unnecessarily harass and burden a third party who has no relevance to the remaining claims in this case.

¹ Plaintiffs simultaneously served notices of intent to serve document subpoenas on thirteen additional current and former members of the NCAA Committee on Infractions and the Infractions Appeals Committee. Per agreement by the parties, the 20-day notice period for these additional subpoenas has been suspended to allow for an opportunity to meet and confer regarding the need for such subpoenas. Plaintiffs refused to similarly suspend the notice period of the Banowsky subpoena to allow for dialogue, and so the NCAA files these objections now.

4. This case has been reduced to a set of tort claims asserted by the only three remaining Plaintiffs: commercial disparagement and defamation, along with derivative tortious interference and civil conspiracy claims. As such, this case now centers exclusively on a limited set of statements contained in the Consent Decree—each of which the Consent Decree quotes verbatim from the Freeh Report that had already been released to the public and accepted by the Penn State Board of Trustees. As consistent with the standards of law, Plaintiffs carry the burden to demonstrate that those statements are demonstrably false and that the NCAA acted with actual malice (*i.e.*, it either “knew” the statements were false, or acted with reckless disregard for their falsity) when repeating them.

5. In recent interrogatory responses, the Estate confirmed the four statements in the Consent Decree that it alleges disparaged Coach Joseph V. Paterno²:

- “[University] President Graham B. Spanier, Senior Vice President-Finance and Business Gary C. Schultz, Athletic Director Timothy M. Curley and Head Football Coach Joseph V. Paterno [] failed to protect against a child sexual predator harming children for over a decade” and “concealed Sandusky’s activities from the Board of Trustees, the

² These statements are the same statements the Estate alleged were disparaging at the very outset of the case, and which this Court considered in evaluating preliminary objections to the commercial disparagement claim on at least two occasions. *See, e.g.*, Complaint at ¶ 90 (May 30, 2013); Opposition to Preliminary Objections at 59 (“It is obvious that labeling a revered coach in a formal consent decree as someone who ‘repeatedly concealed’ child abuse would cause concrete harms to the commercial interests of his estate.”).

University community, and authorities....” Ex. B, Consent Decree at 3; *see also* Ex. C, Freeh Report at 14.

- “These individuals ... empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University’s facilities and affiliate with the University’s prominent football program,” and that this continued access “provided Sandusky with the very currency that enabled him to attract his victims.” Consent Decree at 3; *see also* Freeh Report at 15.
- Spanier, Schultz, Curley and Paterno “repeatedly concealed critical facts relating to Sandusky’s child abuse from the authorities, the University’s Board of Trustees, the Penn State community, and the public at large.” Consent Decree at 3; *see also* Freeh Report at 16.
- Spanier, Schultz, Curley and Paterno “allowed Sandusky to retire as a valued member of Penn State’s football legacy, with ‘ways ‘to continue to work with young people through Penn State,’ essentially granting him license to bring boys to campus facilities for ‘grooming’ as targets for his assaults.” Consent Decree at 4; *see also* Freeh Report at 17.³

6. There is simply no possible explanation why the proposed document and deposition subpoena to Mr. Banowsky has any bearing at all on whether these four statements are false and, if so, whether the NCAA knew they were false in July 2012. No one contends that Mr. Banowsky has any direct or first-hand information about the egregious failures to report child sexual abuse at Penn State that would

³ Plaintiffs Jay Paterno and William Kenney have contended that the NCAA defamed them in repeating verbatim the following finding from the Freeh Report: “Some coaches, administrators and football program staff ignored the red flags of Sandusky’s behaviors and no one warned the public about him.” Consent Decree at 3; *see also* Freeh Report at 15.

bear on the truth or falsity of the challenged statements. Nor is there a single document or piece of deposition testimony indicating that Mr. Banowsky (1) participated in investigating Sandusky's crimes and the failure by Penn State officials to report them, (2) communicated or engaged with the Freeh firm at any point, or (3) had a role in developing or drafting the challenged statements contained in the Consent Decree. All the evidence is directly to the contrary. *See, e.g.*, Ex. D, Berst Dep. 89:13-20 ("[T]he enforcement program was not used in this case. That was the whole point, that the university and executive committee could arrive at a set of statements that the university accepted responsibility for, which then would leave the executive committee the opportunity to develop the penalties that it believed were appropriate to be accepted by the university."); Ex. E, Cooper Dep. (Corman) 50:23-51:2 ("Q. The Penn State matter never came before the committee on infractions; is that correct? A. Yes, that's correct."); Ex. F, Berst Dep. (Corman) 286:14-15 ("[T]his had nothing to do with the enforcement process.").

7. Indeed, the *absence* of involvement by the COI and Infractions Appeals Committee in resolving the Penn State matter was at the heart of Plaintiffs' contract claims and their challenge to the NCAA's authority to enter into Consent Decree, each being *twice* dismissed by this Court. *See* Second Am. Compl. ¶¶ 113-115 ("Under the terms of the Consent Decree President Erickson agreed not to challenge the decree and waived any right to a 'determination of violations by the NCAA

Committee on Infractions, any appeal under NCAA rule, and any judicial process related to the subject matter of the Consent Decree.’ Among others, William Kenney and the Estate of Joseph Paterno filed timely appeals of the Consent Decree with the NCAA Infractions Appeals Committee. The NCAA refused to accept those appeals. . . .[T]he NCAA took the position that, because it had not sanctioned Penn State through the traditional enforcement process required under the NCAA’s own rules, the procedural protections (such as the right to an appeal) provided by those rules were unavailable...”). Plaintiffs are well-aware that the Consent Decree was approved by the NCAA Executive Committee, negotiated with Penn State by NCAA staff, and signed by NCAA President Mark Emmert and Penn State President Rodney Erickson, without involvement of the COI or Mr. Banowsky.

8. Ultimately, since Mr. Banowsky – a member of the COI – is not relevant to the alleged falsity of the challenged statements, much less the NCAA’s alleged knowledge of such falsity, the NCAA can only assume that Plaintiffs are seeking his discovery to obtain information they view as relevant to their twice-dismissed contract claims and challenge to the Consent Decree. For example, Plaintiffs’ proposed subpoena seeks “all documents” related to “the decision-making, evaluation, assessment, basis for, and/or process relating to consideration, imposition, or acceptance of any *penalty, sanction, violation and/or infraction of the NCAA’s rules by Penn State*, its administration, employees, football coaches, Board

of Trustee members and/or agents.” Ex. A at 2 (emphasis added). The subpoena would further require the production of documents related to any “disagreements, concerns, objections, questions and/or discussions by the NCAA *about the authority and/or jurisdiction of the NCAA* to impose such penalty [on Penn State],” as well as the “*repeal, dissolution, modification, and/or superseding of the Consent Decree*, such as the NCAA’s January 2015 repeal of the Consent Decree.” *Id.* (emphasis added). Such information, even if it exists, has no conceivable relevance to the truth of the challenged statements, and is pertinent only (if at all) to the Estate’s failed breach of contract claims, which this Court rejected – *twice*. See Opinion & Order at 8 (Sept. 11, 2014) (“As Coach Joe Paterno was not an involved individual prior to his death, ... he had no rights as an ‘involved individual’ at any time, and as a result, his estate has no rights as an ‘involved individual’ now.”); Opinion & Order at 3 (March 24, 2015) (rejecting Plaintiffs’ “attempt[] to resurrect a claim on which this Court already dismissed.”) . Indeed, with the contract claims dismissed and the request to void the Consent Decree stricken, this case no longer presents questions about, *inter alia*, the NCAA’s authority to enter into the Consent Decree without resort to the traditional infractions process, the NCAA’s “jurisdiction” over the events at Penn State, the validity of the Consent Decree, whether Plaintiffs were entitled to come before the COI and to engage in the infractions process prior to the

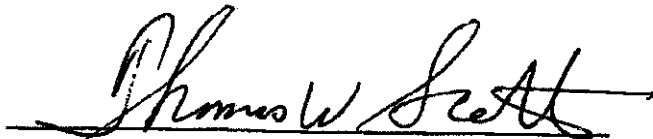
execution of the Consent Decree between the NCAA and Penn State, and whether Penn State, in fact, violated the NCAA Constitution and Bylaws.

9. Nonetheless, Plaintiffs insist on continuing to fight a battle that is over and which they lost. As the Court well knows, Plaintiffs repeatedly attempted to revive the dismissed and deficient contract claims, and in doing so significantly delayed the course of this litigation. Plaintiffs continue to serve written discovery and focus long periods of recent depositions on issues such as the NCAA's authority to enter into the Consent Decree and the manner in which the NCAA has considered other potential violations of its rules.

10. It may well be that Plaintiffs viewed their attack on the validity of the Consent Decree and related contract claims as the centerpiece of their suit against the NCAA. But those claims have been defeated. They should not be permitted to harass and burden third parties that have no relevance whatsoever to the central remaining issues in this case: the truth or falsity of the challenged statements, and whether the NCAA knew the statements were false on July 23, 2012.

For the foregoing reasons, the Court should decline to permit the issuance of the proposed subpoena to Mr. Britton Banowsky.

Respectfully submitted,



Date: February 18, 2016

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*Counsel for Defendants the NCAA, Dr.
Emmert, and Dr. Ray*

EXHIBIT A

**IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO, et al.	:	: CIVIL ACTION – LAW
	:	
Plaintiffs	:	: DOCKET NO.: 2013-2082
	:	
v.	:	
	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION ("NCAA"), et al.	:	
	:	
Defendants	:	

NOTICE OF INTENT TO SERVE A SUBPOENA TO BRITTON BANOWSKY

Plaintiffs the Estate of Joseph Paterno, William Kenney and Joseph V. ("Jay") Paterno, by and through their undersigned counsel, intend to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

Dated this 29th day of January, 2016

 (A handwritten signature in cursive script, reading 'Patricia L. Maher', followed by a circular stamp containing the initials 'BY'.

Thomas J. Weber
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
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Wick Sollers
L. Joseph Loveland
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Telephone: (202) 737-0500

Counsel for Plaintiffs

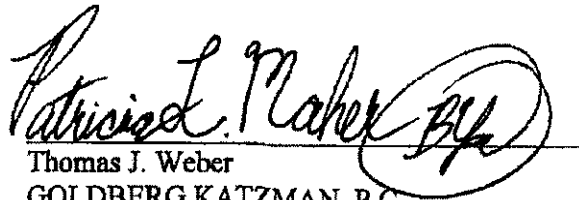
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **NOTICE OF INTENT TO SERVE A SUBPOENA TO BRITTON BANOWSKY** was served this 29th day of January, 2016 by email and first class mail to the following:

Thomas W. Scott
Killian & Gephart
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Everett C. Johnson, Jr.
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Dated this 29th day of January, 2016


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Counsel for Plaintiffs

**IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO, et al.	: CIVIL ACTION – LAW
	:
Plaintiffs	: DOCKET NO.: 2013-2082
	:
v.	:
	:
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION ("NCAA"), et al.	:
	:
Defendants	:

SUBPOENA TO ATTEND AND TESTIFY

To: Britton Banowsky
545 E John Carpenter Fwy Ste 1025
Irving, TX 75062-3931

1. You are Ordered by the Court to come to: Dallas Marriott Las Colinas, 223 West Las Colinas Boulevard, Irving, TX 75039 on Monday, February 29, 2016 at 9:30 a.m. to testify on behalf of Plaintiffs in the above-captioned cases and to remain until excused.

2. And bring with you the following: Documents listed on Attachment A hereto. See attached.

If you fail to attend or to produce the documents or things required by the subpoena, you may be subjected to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

Name:	<u>Patricia L. Maher</u>
Address:	<u>King & Spalding LLP, 1700 Pennsylvania Avenue, N.W.</u> <u>Suite 2000, Washington, D. C. 20006</u>
Telephone:	<u>202-626-5504</u>
Supreme Court ID#	<u>Admitted pro hac vice</u>
Attorney for:	<u>Plaintiffs</u>

BY THE COURT:

DATE: _____

Prothonotary/Clerk, Civil Division

Deputy

ATTACHMENT A

For the period January 1, 2011, through December 31, 2015, all documents, including but not limited to memoranda, notes of telephone conversations, handwritten notes, emails from any email account (including but not limited to non-work email accounts such as Gmail or Yahoo Mail) and text messages or short message service (SMS) messages, that evidence, reflect or relate in any way to the following:

- (a) the Penn State football program and/or Penn State employees, football coaches (including, but not limited to, Joseph Paterno, Jay Paterno, and William Kenney), Board of Trustees members, administrators, or agents;
- (b) the NCAA Consent Decree, titled "Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University," dated July 23, 2012, including, but not limited to, drafts of the Consent Decree and any documents that relate in any way to the repeal, dissolution, modification and/or superseding of the Consent Decree, such as the NCAA's January 2015 repeal of the Consent Decree and the superseding Athletics Integrity Agreement that the NCAA terminated in December 2015;
- (c) the decision-making, evaluation, assessment, basis for, and/or process relating to consideration, imposition, or acceptance of any penalty, sanction, violation, and/or infraction of the NCAA's rules, bylaws and/or Constitution by Penn State, its administration, employees, football coaches, Board of Trustee members and/or agents. This request includes, but is not limited to, documents related to disagreements, concerns, objections, questions and/or discussions by the NCAA about the authority and/or jurisdiction of the NCAA to impose such penalty, sanction, violation, and/or infraction, as well as documents related to any repeal, dissolution, modification and/or superseding treatment of such penalty, sanction, violation and/or infraction; and
- (d) the Freeh Report, titled "Report of the Special Investigative Counsel Regarding the Actions of the Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky," prepared by Freeh Sporkin & Sullivan, LLP, and any other actual or stated basis for the statements contained in the Consent Decree.

EXHIBIT B

**BINDING CONSENT DECREE IMPOSED BY THE NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION AND ACCEPTED BY THE PENNSYLVANIA
STATE UNIVERSITY**

I. BASIS FOR CONSENT DECREE

On November 5, 2011, the National Collegiate Athletic Association (“NCAA” or the “Association”) learned of allegations of child sexual abuse occurring in the athletic facilities of The Pennsylvania State University (“University” or “Penn State”), perpetrated by former assistant football coach Gerald A. Sandusky (“Sandusky”). The University commissioned Freeh Sporkin & Sullivan, LLP (“FSS”), led by former FBI Director Louis Freeh, to investigate the alleged failure of University personnel to respond to and report Sandusky’s misconduct, and “[t]he circumstances under which such abuse could occur in University facilities or under the auspices of University programs for youth.”¹ On June 22, 2012, a Criminal Jury convicted Sandusky on 45 criminal counts related to 10 victims, including a 2001 incident that occurred in the University athletic showers and was witnessed by a then-graduate assistant. On July 12, 2012, FSS released its investigative report (the “Freeh Report”). The Freeh Report’s findings depict an environment shaped by the actions and inactions of members of the leadership and board of Penn State that allowed Sandusky’s serial child sexual abuse.

The NCAA recognizes that the circumstances involved in the Penn State matter are, in many respects, unlike any matter encountered by the NCAA in the past; it is doubtful, hopefully, that a similar circumstance would arise on any other campus in the future. In particular, the egregiousness of the predicate conduct is unprecedented, amounting to a failure of institutional and individual integrity far exceeding a lack of institutional control or individual unethical conduct. The University has undertaken a commendable process by commissioning the independent FSS investigation. FSS has established an exhaustive factual record compiled from, *inter alia*, more than 430 interviews and analysis of more than 3.5 million pieces of electronic data and documents.²

In light of this record and the University’s willingness, for purposes of this resolution, to accept the Freeh Report, which the University itself commissioned, traditional investigative and administrative proceedings would be duplicative and unnecessary. Rather, the existing record permits fashioning an appropriate remedy for the violations on an expedited timetable, which benefits current and future University students, faculty and staff.

¹ Freeh Sporkin & Sullivan, LLP, Report of the Special Investigative Counsel Regarding the Actions of The Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky, July 12, 2012, page 8, *available at* http://www.thefreehreportonpsu.com/REPORT_FINAL_071212.pdf.

² *Id.* at 9.

II. FINDINGS AND CONCLUSIONS

In a November 17, 2011 letter from NCAA President Mark Emmert to University President Rodney Erickson, Dr. Emmert noted that the membership of the Association has made clear in its Constitution and Bylaws what is expected of member institutions, administrators and coaches. Penn State was asked to describe how the University and relevant personnel have met their obligations to the Association. Penn State has communicated to the NCAA that it accepts the findings of the Freeh Report for purposes of this resolution and acknowledges that those facts constitute violations of the Constitutional and Bylaw principles described in the letter. Penn State expressly agrees not to challenge the consent decree and waives any claim to further process, including, without limitation, any right to a determination of violations by the NCAA Committee on Infractions, any appeal under NCAA rules, and any judicial process related to the subject matter of this Consent Decree.

Therefore, without further investigation or response, the findings of the Criminal Jury and the Freeh Report establish a factual basis from which the NCAA concludes that Penn State breached the standards expected by and articulated in the NCAA Constitution and Bylaws.

1. A failure to value and uphold institutional integrity demonstrated by inadequate, and in some instances non-existent, controls and oversight surrounding the athletics program of the University, such as those controls prescribed by Articles 2.1, 6.01.1, and 6.4 of the NCAA Constitution.
2. A failure to maintain minimal standards of appropriate and responsible conduct. The NCAA seeks to foster an environment and culture of honesty, as exemplified by NCAA Bylaws 10.01.1 and 11.1.1, and by Bylaw 10.1 on ethical conduct. Indeed, NCAA Bylaw 10.1 enumerates a non-exhaustive list of examples of inappropriate conduct. In addition, Article 2.4 of the NCAA Constitution requires athletic programs to adhere to fundamental values of respect, fairness, civility, honesty and responsibility.
3. A lack of adherence to fundamental notions of individual integrity. An institution's head coach should promote an atmosphere for compliance and monitor the activities of all assistant coaches and other administrators involved with the program who report directly or indirectly to the coach. Further, NCAA Bylaw 19.01.2, consistent with Article 2.4 of the NCAA Constitution, demands the employees associated with intercollegiate athletics to serve as positive moral models for students in order "for intercollegiate athletics to promote the character development of participants, to enhance the integrity of higher education and to promote civility in society."

The entirety of the factual findings in the Freeh Report supports these conclusions. A detailed recitation of the Freeh Report is not necessary, but these conclusions rely on the following key factual findings with respect to the University's oversight of its football program:

- [University] President Graham B. Spanier, Senior Vice President-Finance and Business Gary C. Shultz, Athletic Director Timothy M. Curley and Head Football Coach Joseph V. Paterno [] failed to protect against a child sexual predator harming children for over a decade. These men concealed Sandusky's activities from the Board of Trustees, the University community and authorities. . . .
- These individuals, unchecked by the Board of Trustees that did not perform its oversight duties, empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's prominent football program. Indeed, that continued access provided Sandusky with the very currency that enabled him to attract his victims. Some coaches, administrators and football program staff members ignored the red flags of Sandusky's behaviors and no one warned the public about him.
- By not promptly and fully advising the Board of Trustees about the 1998 and 2001 child sexual abuse allegations against Sandusky and the subsequent Grand Jury investigation of him, Spanier failed in his duties as President. The Board also failed in its duties to oversee the President and senior University officials in 1998 and 2001 by not inquiring about important University matters and by not creating an environment where senior University officials felt accountable.³

FSS recognized that Spanier, Schultz, Paterno and Curley provided various explanations for their deficient conduct, but FSS found that it was

- more reasonable to conclude that, in order to avoid the consequences of bad publicity, the most powerful leaders at the University – Spanier, Schultz, Paterno and Curley – repeatedly concealed critical facts relating to Sandusky's child abuse from the authorities, the University's Board of Trustees, the Penn State community and the public at large.⁴

Although FSS concluded that avoiding the consequences of bad publicity was the most significant cause for the University's failure to protect child victims and report to authorities, FSS further concluded it was not the only cause. FSS also noted, among other causes, that

³ *Id.* at 14-15.

⁴ *Id.* at 15-16.

- the President “discouraged discussion and dissent”;
- Spanier, Schultz, Paterno, and Curley allowed Sandusky to retire as a valued member of the University’s football legacy, with “ways ‘to continue to work with young people through Penn State,’ essentially granting him license to bring boys to campus facilities for ‘grooming’ as targets for his assaults”;
- the football program “did not fully participate in, or opted out, of some University programs, including Clery Act compliance. . . .”; and
- the University maintained a “culture of reverence for the football program that is ingrained at all levels of the campus community.”⁵

III. SANCTIONS

The NCAA concludes that this evidence presents an unprecedented failure of institutional integrity leading to a culture in which a football program was held in higher esteem than the values of the institution, the values of the NCAA, the values of higher education, and most disturbingly the values of human decency. The sexual abuse of children on a university campus by a former university official – and even the active concealment of that abuse – while despicable, ordinarily would not be actionable by the NCAA. Yet, in this instance, it was the fear of or deference to the omnipotent football program that enabled a sexual predator to attract and abuse his victims. Indeed, the reverence for Penn State football permeated every level of the University community. That imbalance of power and its result are antithetical to the model of intercollegiate athletics embedded in higher education. Indeed, the culture exhibited at Penn State is an extraordinary affront to the values all members of the Association have pledged to uphold and calls for extraordinary action.

As a result, the NCAA has determined that the University’s sanctions be designed to not only penalize the University for contravention of the NCAA Constitution and Bylaws, but also to change the culture that allowed this activity to occur and realign it in a sustainable fashion with the expected norms and values of intercollegiate athletics. Moreover, the NCAA recognizes that in this instance no student-athlete is responsible for these events and, therefore, the NCAA has fashioned its sanctions in consideration of the potential impact on all student-athletes. To wit, after serious consideration and significant discussion, the NCAA has determined not to impose the so-called “death penalty.” While these circumstances certainly are severe, the suspension of competition is most warranted when the institution is a repeat violator and has failed to cooperate or take corrective action. The University has never before had NCAA major violations, accepted these penalties and corrective actions, has removed all of the individual offenders identified by FSS from their past senior leadership roles, has itself commissioned the FSS investigation and provided unprecedented access and openness, in some instances, even agreed to waive attorney-client privilege, and already has implemented many corrective actions. Acknowledging these and other factors, the NCAA does not deem the so-called “death penalty” to be appropriate.

⁵ *Id.* at 16-17.

In light of the foregoing, the NCAA imposes the following sanctions on the University:

A. Punitive Component

- **\$60 million fine.** The NCAA imposes a \$60 million fine, equivalent to the approximate average of one year's gross revenue from the Penn State football program, to be paid over a five-year period beginning in 2012 into an endowment for programs preventing child sexual abuse and/or assisting the victims of child sexual abuse. The minimum annual payment will be \$12 million until the \$60 million is paid. The proceeds of this fine may not be used to fund programs at the University. No current sponsored athletic team may be reduced or eliminated in order to fund this fine.
- **Four-year postseason ban.** The NCAA imposes a four-year ban on participation in postseason play in the sport of football, beginning with the 2012-2013 academic year and expiring at the conclusion of the 2015-2016 academic year. Therefore, the University's football team shall end its 2012 season and each season through 2015 with the playing of its last regularly scheduled, in-season contest and shall not be eligible to participate in any postseason competition, including a conference championship, any bowl game, or any post-season playoff competition.
- **Four-year reduction of grants-in-aid.** For a period of four years commencing with the 2013-2014 academic year and expiring at the conclusion of the 2016-2017 academic year, the NCAA imposes a limit of 15 initial grants-in-aid (from a maximum of twenty-five allowed) and for a period of four years commencing with the 2014-2015 academic year and expiring at the conclusion of the 2017-2018 academic year a limit of 65 total grants-in-aid (from a maximum of 85 allowed) for football during each of those specified years. In the event the number of total grants-in-aid drops below 65, the University may award grants-in-aid to non-scholarship student-athletes who have been members of the football program as allowed under Bylaw 15.5.6.3.6.
- **Five years of probation.** The NCAA imposes this period of probation, which will include the appointment of an on-campus, independent Integrity Monitor and periodic reporting as detailed in the Corrective Component of this Consent Decree. Failure to comply with the Consent Decree during this probationary period may result in additional, more severe sanctions.
- **Vacation of wins since 1998.** The NCAA vacates all wins of the Penn State football team from 1998 to 2011. The career record of Coach "Joe" Paterno will reflect the vacated records.

- **Waiver of transfer rules and grant-in-aid retention.** Any entering or returning football student-athlete will be allowed to immediately transfer and will be eligible to immediately compete at the transfer institution, provided he is otherwise eligible. Any football student-athlete who wants to remain at the University may retain his athletic grant-in-aid, as long as he meets and maintains applicable academic requirements, regardless of whether he competes on the football team.
- **Individual penalties to be determined.** The NCAA reserves the right to initiate a formal investigatory and disciplinary process and impose sanctions on individuals after the conclusion of any criminal proceedings related to any individual involved.

B. Corrective Component

- **Adoption of all recommendations presented in Chapter 10 of the Freeh Report.** The NCAA requires the University to adopt all recommendations for reform delineated in Chapter 10 of the Freeh Report. The University shall take all reasonable steps to implement the recommendations in spirit and substance by December 31, 2013.
- **Implementation of Athletics Integrity Agreement.** The Freeh Report includes a number of recommendations related to the University's Athletic Department. Specifically, in Chapter 10, Section 5.0, the Report addresses the integration of the Athletic Department into the greater University community. Within 10 days of this Consent Decree, the University will be required to enter into an "Athletics Integrity Agreement" ("AIA") with the NCAA and the Big Ten Conference, which obligates the University to adopt all of the recommendations in Section 5.0 of the Freeh Report as described in the above paragraph and, at a minimum, the following additional actions:
 - **Compliance Officer for Athletics.** Establish and select an individual for a position of a compliance officer or equivalent who is, at a minimum, responsible for the ethical and compliance obligations of the Athletic Department.
 - **Compliance Council.** Create a Compliance Council (or Council Subcommittee) composed of faculty, senior University administrators, and the compliance officer for athletics, which shall be responsible for review and oversight of matters related to ethical, legal and compliance obligations of the Athletic Department.

- Disclosure Program. Create a reporting mechanism, including a hotline, for named or anonymous individuals to disclose, report, or request advice on any identified issues or questions regarding compliance with (i) the AIA; (ii) the Athletic Department's policies, conduct, practices, or procedures, or (iii) the NCAA Constitution, Bylaws, or the principals regarding institutional control, responsibility, ethical conduct, and integrity reflected in the Constitution and Bylaws.
- Internal Accountability and Certifications. Appoint a named coach, manager, or administrator for each of the University's NCAA-sanctioned intercollegiate athletic teams who shall be assigned to monitor and oversee activities within his or her team and shall annually certify to the Compliance Council that his or her team is compliant with all relevant ethical, legal, compliance and University standards and obligations.
- External Compliance Review/Certification Process. The Athletic Director shall annually certify to the Compliance Council, the Board of Trustees, and the NCAA that the Athletic Department is in compliance with all ethical, compliance, legal and University obligations. If the Department fails to earn a certification, the Board of Trustees (or subcommittee thereof) or an appropriate University administrator shall take appropriate action against the Athletic Department, including the possibility of reduction in athletic funding.
- Athletics Code of Conduct. Create or update any code of conduct of the Athletic Department to codify the values of honesty, integrity and civility.
- Training and Education. In addition to Chapter 10, Section 5.5 of the Freeh Report, require all student-athletes and University employees associated with the Athletic Department, including faculty and staff to complete a yearly training course that addresses issues of ethics, integrity, civility, standards of conduct and reporting of violations. Each person who is required to complete training shall certify, in writing, that he or she has received such training. All training shall be overseen by the Compliance Council. The Board of Trustees also should receive training and education on these issues, including its relationship, role and responsibilities regarding the athletics program.
- If the NCAA determines, in its sole discretion, that the University materially breached any provision of the AIA, such action shall be considered grounds for extending the term of the AIA or imposing additional sanctions, up to and including, a temporary ban on participation in certain intercollegiate athletic competition and additional fines. The NCAA shall be permitted to accept as true and take into consideration all factual findings of the Freeh Report in imposing additional sanctions related to breach of the AIA and may initiate further NCAA investigative and administrative proceedings. The NCAA will provide the University notice of the allegation of a material breach and an opportunity to

respond, but the final determination rests with the NCAA.


- **Appointment of an independent Athletics Integrity Monitor for a five-year period.** The NCAA requires that the University appoint an independent Athletics Integrity Monitor (the "Monitor") for a five-year period, at the University's expense. The Monitor will prepare a quarterly report to the University's Board of Trustees, the Big Ten Conference, and the NCAA regarding the University's execution and maintenance of the provisions of the AIA. The Monitor will make recommendations to the University to take any steps he or she reasonably believes are necessary to comply with the terms of the AIA and to enhance compliance with NCAA rules and regulations. The Monitor will operate under the following conditions:

- He or she will be selected by the NCAA, in consultation with the University and the Big Ten Conference.
- He or she will have access to any University facilities, personnel and non-privileged documents and records as are reasonably necessary to assist in the execution of his or her duties. The University shall preserve all such records as directed by the Monitor.
- He or she will have the authority to employ legal counsel, consultants, investigators, experts and other personnel reasonably necessary to assist in the proper discharge of his or her duties. His or her expenses will be paid by the University, and the University shall indemnify and hold harmless the Monitor and his or her professional advisors from any claim by any third party except for conduct: a) outside the scope of the Monitor's duties; b) undertaken in bad faith; or c) constituting gross negligence or willful misconduct.

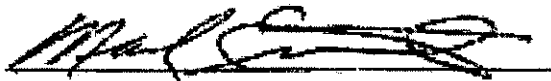
This Consent Decree may be modified or clarified by mutual written consent of the parties.

By signature of its President below, the University represents (i) that it has taken all actions necessary, to execute and perform this Consent Decree and the AIA and will take all actions necessary to perform all actions specified under this Consent Decree and the AIA in accordance with the terms hereof and thereof; (ii) its entry into this Consent Decree and the AIA is consistent with, and allowed by, the laws of Pennsylvania and any other applicable law.

IN WITNESS WHEREOF, this Consent Decree has been signed by or on behalf of each of the parties as of July 23, 2012.



Rodney A. Erickson, President
The Pennsylvania State University



Mark A. Emmert, President
National Collegiate Athletic Association

EXHIBIT C

**Report of the Special Investigative Counsel
Regarding the Actions of The
Pennsylvania State University Related to
the Child Sexual Abuse Committed by
Gerald A. Sandusky**

**Freeh Sporkin & Sullivan, LLP
July 12, 2012**

TABLE OF CONTENTS

Scope of Review and Methodology.....	8
Independence of the Investigation.....	11
Executive Summary	13
• Findings	
• Recommendations for University Governance, Administration, and the Protection of Children in University Facilities and Programs	
Timeline of Significant Events.....	19
Chapter 1: The Pennsylvania State University – Governance and Administration	31
I. Key Leadership Positions	
A. President	
B. Executive Vice President and Provost (“EVP- Provost”)	
C. Senior Vice President - Finance and Business (“SVP- FB”)	
D. General Counsel	
II. Principal Administrative Areas	
A. University Police and Public Safety (“University Police Department”)	
B. Office of Human Resources (“OHR”)	
C. Department of Intercollegiate Athletics (“Athletic Department”)	
D. Outreach	
III. Administrative Controls	
A. Policies and Procedures	
B. Oversight and Internal Controls	

Chapter 2: Response of University Officials to the Allegation of Child Sexual Abuse Against Sandusky – 1998.....39

- I. Sandusky's Association with Penn State**
 - A. Sandusky's Criminal Activity 1995-1998
- II. Events of May 3, 1998 at the Lasch Building**
- III. Investigation of Sandusky - 1998**
 - A. May 4 – 6, 1998: Police Report, Initial Investigation and Psychological Evaluation of the Victim
 - B. May 7 – 9, 1998: A Second Evaluation of the Victim
 - C. May 12 - 19, 1998: Police Overhear Sandusky Admit to Showering with the Victim
 - D. Late May 1998: District Attorney's Decision to Not Prosecute Sandusky
 - E. June 1, 1998: University Police Speak with Sandusky
- IV. Involvement of University Officials in the Sandusky Investigation**
 - A. May 4 – 30, 1998: Notifications and Updates to Spanier, Schultz, Paterno and Curley
 - B. June 1 – 10, 1998: Report to University Officials on Sandusky Interview and Case Closure
 - C. 2011 Grand Jury Testimony of Spanier, Schultz, Paterno and Curley
 - D. University Officials Do Not Notify the Board of the Sandusky Investigation
 - E. Sandusky's Criminal Activity 1998 – 2001

Chapter 3: Sandusky's Retirement from the University – 199955

- I. Sandusky's Decision to Retire**
- II. Negotiating the Agreement**
- III. Sandusky's Retirement Agreement**

Chapter 4: Response of University Officials to the Allegation of Child Sexual Abuse Against Sandusky – 2001.....62

- I. Janitors' Observations of Sandusky – 2000
- II. McQueary's Observations of Sandusky – 2001
- III. University Leaders' Response to McQueary's Observations
 - A. February 11, 2001: Paterno Reports Sandusky Incident to Schultz and Curley
 - B. February 11, 2001: Schultz Discusses "Reporting of Suspected Child Abuse" with University's Outside Legal Counsel
 - C. February 12, 2001: Initial Response of Spanier, Schultz and Curley to Sandusky Incident
 - D. Schultz and Curley Meet with McQueary – February 2001
 - E. February 25, 2001: Spanier, Schultz and Curley Meet Again to Discuss Sandusky Incident
 - F. February 27, 2001: Curley Proposes Revised Response to the Sandusky Incident
- IV. Curley Meets with Sandusky – March 1998
- V. March 19, 2001: Curley Meets with Second Mile Leadership
- VI. University Officials Do Not Notify the Board of the Sandusky Incident
- VII. Sandusky's Criminal Activity After 2001

Chapter 5: Response of University Officials to the Grand Jury Investigation – 2010, 201180

- I. Subpoenas Issued for the Grand Jury Testimony of Senior University Officials
 - A. Law Enforcement Interviews of University Personnel
- II. *Patriot-News* Article Reveals Sandusky Investigation – March 2011
- III. Board of Trustees Meeting – May 2011

- IV. University Response to the Presentment and Criminal Charges Against Sandusky, Schultz and Curley – October and November 2011**
 - A. Baldwin, Spanier and Garban Learn of Presentment and Criminal Charges – October and November 2011
 - B. Board of Trustees Conference Call – November 5, 2011
 - C. Board of Trustees Meeting – November 6, 2011
 - D. Board of Trustees Conference Call – November 8, 2011
 - E. Board of Trustees Meeting – November 9, 2011

Chapter 6: Board of Trustees.....97

- I. Board Structure and Responsibilities**
- II. The Board’s Duty of Oversight and Reasonable Inquiry**
 - A. The Board’s Failure of Oversight and Reasonable Inquiry in 1998 and 2001
 - B. The Board’s Failure of Reasonable Inquiry in 2011

Chapter 7: Sandusky’s Post-Retirement Interactions with the University.....103

- I. Sandusky’s Ongoing Contacts with the University**
 - A. Sandusky’s Continued Access to University Facilities
 - B. Sandusky’s Continued Access to the Nittany Lion Club at Beaver Stadium
 - C. Sandusky’s Football Camps at University Campuses
 - D. Sandusky’s Continued Business Dealings with the University
 - E. Failure to Prohibit Sandusky’s Access to University Facilities
- II. Sandusky’s Post-Retirement Involvement in Second Mile Activities**
 - A. Penn State and the Second Mile Organization
 - B. “Collaborative Relationship” between Penn State and Second Mile

C. Second Mile Camps on Penn State Campuses

Chapter 8: Federal and State Child Sexual Abuse Reporting Requirements.....110

- I. The Federal “Clery Act”
 - A. Campus Security Authorities (“CSAs”)
 - B. Collecting Crime Statistics
 - C. Issuance of Timely Warnings
 - D. Preparation of an Annual Safety Report
- II. The University’s Failure to Implement the Clery Act
- III. Pennsylvania Child Sexual Abuse Reporting Requirements
- IV. Implications of the University’s Failure to Report Allegations of Child Sexual Abuse
- V. Improvements in Clery Act Compliance Since November 2011

Chapter 9: The Protection of Children in University Facilities and Programs120

- I. University Policies for the Protection of Non-Student Minors
 - A. *AD 39, Minors Involved in University-Sponsored Programs or Programs held at the University and/or Housed in University Facilities*
 - B. *HR 99, Background Check Process*
- II. Implementation of the University’s Child Protection Policies
- III. Use of University Facilities by Third Parties for Youth Programs

Chapter 10: Recommendations for University Governance, Administration, and the Protection of Children in University Facilities and Programs127

1.0 Penn State Culture

- 2.0 Administration and General Counsel: Structure, Policies and Procedures
- 3.0 Board of Trustees: Responsibilities and Operations
- 4.0 Compliance: Risk and Reporting Misconduct
- 5.0 Athletic Department: Integration and Compliance
- 6.0 University Police Department: Oversight, Policies and Procedures
- 7.0 Management of University Programs for Children and Access to University Facilities
- 8.0 Monitoring Change and Measuring Improvement

Appendices

- Appendix A – Exhibits
- Appendix B – Pennsylvania State University Policies: AD 67, AD 72, HR 99

SCOPE OF REVIEW AND METHODOLOGY

Freeh Sporkin & Sullivan LLP, ("FSS"), was engaged by the Special Investigations Task Force ("Task Force") on behalf of The Pennsylvania State University's Board of Trustees ("Board" or "Trustees")^a as Special Investigative Counsel on November 21, 2011. As Special Investigative Counsel, FSS was asked to perform an independent, full and complete investigation of:

- The alleged failure of Pennsylvania State University personnel to respond to, and report to the appropriate authorities, the sexual abuse of children by former University football coach Gerald A. Sandusky ("Sandusky");
- The circumstances under which such abuse could occur in University facilities or under the auspices of University programs for youth.

In addition, the Special Investigative Counsel was asked to provide recommendations regarding University governance, oversight, and administrative policies and procedures that will better enable the University to prevent and more effectively respond to incidents of sexual abuse of minors in the future.

To achieve these objectives the Special Investigative Counsel developed and implemented an investigative plan to:

- Identify individuals associated with the University at any level or in any office, who knew, or should have known, of the incidents of sexual abuse of children committed by Sandusky, the substance of their knowledge, and the point at which they obtained that knowledge;
- Examine how these incidents became known to, and were handled by, University Trustees, staff, faculty, administrators, coaches or others, with

^a The members of the Special Investigations Task Force are: Chairman, Kenneth C. Frazier, Chief Executive Officer and President, Merck & Co., Inc.; Vice Chairman, Ronald J. Tomalis, Secretary of the Pennsylvania Department of Education; H. Jesse Arnette, Attorney; Guion S. Bluford, Jr., Ph.D., Colonel, United States Air Force (retired); Mark H. Dambly, President, Pennrose Properties, LLC; Keith W. Eckel, Sole Proprietor and President, Fred W. Eckel & Sons Farms, Inc.; Daniel R. Hagen, Ph.D., Immediate Past-Chair, The Pennsylvania State University Faculty Senate, Professor, College of Agricultural Sciences; Rodney P. Hughes, Doctoral Student, The Pennsylvania State University; Karen B. Peetz, Chairman, Board of Trustees, The Pennsylvania State University, Vice Chairman and Chief Executive Officer, Financial Markets and Treasury Services, Bank of New York Mellon.

particular regard to institutional governance, decision making, oversight and culture.

- Identify any failures and their causes on the part of individuals associated with the University at any level or in any office, or gaps in administrative processes that precluded the timely and accurate reporting of, or response to, reports of these incidents.

The Special Investigative Counsel implemented the investigative plan by:

- Conducting over 430 interviews of key University personnel and other knowledgeable individuals to include: current and former University Trustees and Emeritus Trustees; current and former University administrators, faculty, and staff, including coaches; former University student-athletes; law enforcement officials; and members of the State College community at the University Park, Behrend, Altoona, Harrisburg and Wilkes-Barre campuses, and at other locations in Delaware, Pennsylvania, New York, Maryland and the District of Columbia, and by telephone;
- Analyzing over 3.5 million pieces of pertinent electronic data and documents;
- Reviewing applicable University policies, guidelines, practices and procedures;
- Establishing a toll-free hotline and dedicated email address to receive information relevant to the investigation, and reviewing the information provided from telephone calls and emails received between November 21, 2011 and July 1, 2012;
- Cooperating with law enforcement, government and non-profit agencies, including the National Center for Missing and Exploited Children (NCMEC), and athletic program governing bodies;
- Benchmarking applicable University policies, practices and procedures against those of other large, public and private universities and youth-serving organizations; and
- Providing interim recommendations to the Board in January 2012 for the immediate protection of children.

The information in this report was gathered under the applicable attorney-client privilege and attorney work product doctrine, and with due regard for the privacy of the interviewees and the documents reviewed. All materials were handled and

maintained in a secure and confidential manner. This report sets forth the essential findings of the investigation, pursuant to the appropriate waiver of the attorney-client privilege by the Board.

Citations in this report have been redacted to protect the identity of people who spoke with the Special Investigative Council. Citations also include references to the internal database maintained by the Special Investigative Council to collect and analyze documents and emails. The references include citation to a unique identifying number assigned to each individual piece of information and are located in the endnotes and footnotes of this report.

INDEPENDENCE OF THE INVESTIGATION

The Special Investigative Counsel's mandate was made clear in the public statement of Trustee Kenneth C. Frazier announcing this investigation. "No one is above scrutiny," Frazier said. "[Freeh] has complete rein to follow any lead, to look into every corner of the University to get to the bottom of what happened and then to make recommendations that ensure that it never happens again." Frazier assured the Special Investigative Counsel that the investigation would be expected to operate with complete independence and would be empowered to investigate University staff, senior administrators, and the Board of Trustees.

The Special Investigative Counsel operated with total independence as it conducted this investigation. Its diverse membership included men and women with extensive legal, law enforcement and child protection backgrounds who were experienced in conducting independent, complex and unbiased investigations. None of the Special Investigative Counsel's attorneys or investigators attended The Pennsylvania State University or had any past or present professional relationship with the University. The Special Investigative Counsel maintained a secure workspace that was separate from all other University offices and classrooms. The workspace was accessible to the public only when accompanied by a member of the Special Investigative Counsel team. The Special Investigative Counsel's computer systems were not connected to the University's network.

The Special Investigative Counsel had unfettered access to University staff, as well as to data and documents maintained throughout the University. The University staff provided a large volume of raw data from computer systems, individual computers and communications devices. The Special Investigative Counsel performed the forensic analysis and review of this raw data independent of the University staff. From this review and analysis, the Special Investigative Counsel discovered the most important documents in this investigation – emails among former President Graham B. Spanier, former Senior Vice President-Finance and Business Gary C. Schultz and Athletic Director Timothy M. Curley from 1998 and 2001 - relating to Sandusky's crimes. The Special Investigative Counsel immediately provided these documents to law enforcement when they were discovered.

The Special Investigative Counsel interviewed a cross-section of individuals including current and former University faculty and staff members, Trustees, and student-athletes. The interviews covered a wide range of academic, administrative and athletic topics relating to Sandusky's crimes and the allegations against Schultz and Curley; as well as the governance and oversight function of the University's administrators and Board of Trustees. The temporal scope of the interviews ranged from the late 1960s, when Sandusky first attended the University, to the present.

The witnesses interviewed in this investigation, with few exceptions, were cooperative and forthright. Very few individuals declined to be interviewed, including some who declined on the advice of counsel (i.e., Sandusky, Schultz, Curley and former University outside legal counsel Wendell Courtney). At the request of the Pennsylvania Attorney General, the Special Investigative Counsel did not interview former Pennsylvania State University Director of Public Safety Thomas Harmon or former coach Michael McQueary, among others. Although the information these individuals could have provided would have been pertinent to the investigation, the findings contained in this report represent a fair, objective and comprehensive analysis of facts. Moreover, the extensive contemporaneous documentation that the Special Investigative Counsel collected provided important insights, even into the actions of those who declined to be interviewed.

No party interfered with, or attempted to influence, the findings in this report. The Special Investigative Counsel revealed this report and the findings herein to the Board of Trustees and the general public at the same time. No advance copy was provided to the Board or to any other person outside of the Special Investigative Counsel's team, and the work product was not shared with anyone who was not part of the Special Investigative Counsel's team.

EXECUTIVE SUMMARY

On November 4, 2011 the Attorney General of the Commonwealth of Pennsylvania ("Attorney General") filed criminal charges against Gerald A. Sandusky ("Sandusky") that included multiple counts of involuntary deviate sexual intercourse, aggravated indecent assault, corruption of minors, unlawful contact with minors and endangering the welfare of minors. Several of the offenses occurred between 1998 and 2002, during which time Sandusky was either the Defensive Coordinator for The Pennsylvania State University ("Penn State" or "University") football team or a Penn State professor Emeritus with unrestricted access to the University's football facilities. On November 4, 2011, the Attorney General filed criminal charges against the University's Athletic Director ("AD") Timothy M. Curley ("Curley") and Senior Vice President Finance and Business ("SVP-FB"), Gary C. Schultz ("Schultz") for failing to report allegations of child abuse against Sandusky to law enforcement or child protection authorities in 2002^b and for committing perjury during their testimony about the allegations to the Grand Jury in Dauphin County, Pennsylvania, in January 2011.

On June 22, 2012, a Centre County jury in Bellefonte, Pennsylvania found Sandusky guilty of 45 counts of the criminal charges against him. As of the date of this report, the charges against Curley and Schultz have not been heard by the court.

The criminal charges filed against these highly respected University and community leaders are unprecedented in the history of the University. Several senior University leaders who had knowledge of the allegations did not prepare for the possibility that these criminal charges would be filed. In the days and weeks surrounding the announcement of the charges, University leaders (referred to on campus as "Old Main") and the University's Board of Trustees ("Board" or "Trustees"), struggled to decide what actions the University should take and how to be appropriately transparent about their actions. The high degree of interest exhibited by members of the University community, alumni, the public and the national media put additional pressure on these leaders to act quickly.

On November 11, 2011, the Trustees formed the "Special Investigations Task Force ("Task Force") of the Board of Trustees of The Pennsylvania State University" and

^b This date was later determined by the Special Investigative Counsel to be 2001.

selected Trustees Kenneth C. Frazier and Ronald J. Tomalis to lead its efforts. On November 21, 2011 the Task Force engaged the law firm of Freeh Sporkin & Sullivan, LLP ("FSS") as Special Investigative Counsel, to conduct an investigation into the circumstances surrounding the criminal charges of sexual abuse of minors in or on Penn State facilities by Sandusky; the circumstances leading to the criminal charges of failure to report possible incidents of sexual abuse of minors; and the response of University administrators and staff to the allegations and subsequent Grand Jury investigations of Sandusky. In addition, the Special Investigative Counsel was asked to provide recommendations regarding University governance, oversight and administrative procedures that will better enable the University to effectively prevent and respond to incidents of sexual abuse of minors in the future.

The Pennsylvania State University is an outstanding institution nationally renowned for its excellence in academics and research. There is a strong spirit of community support and loyalty among its students, faculty and staff. Therefore it is easy to understand how the University community was devastated by the events that occurred.

FINDINGS

The most saddening finding by the Special Investigative Counsel is the total and consistent disregard by the most senior leaders at Penn State for the safety and welfare of Sandusky's child victims. As the Grand Jury similarly noted in its presentment,¹ there was no "attempt to investigate, to identify Victim 2, or to protect that child or any others from similar conduct except as related to preventing its re-occurrence on University property."

Four of the most powerful people at The Pennsylvania State University – President Graham B. Spanier, Senior Vice President-Finance and Business Gary C. Schultz, Athletic Director Timothy M. Curley and Head Football Coach Joseph V. Paterno – failed to protect against a child sexual predator harming children for over a decade. These men concealed Sandusky's activities from the Board of Trustees, the University community and authorities. They exhibited a striking lack of empathy for Sandusky's victims by failing to inquire as to their safety and well-being, especially by not attempting to determine the identity of the child who Sandusky assaulted in the Lasch Building in 2001. Further, they exposed this child to additional harm by alerting

Sandusky, who was the only one who knew the child's identity, of what McQueary saw in the shower on the night of February 9, 2001.

These individuals, unchecked by the Board of Trustees that did not perform its oversight duties, empowered Sandusky to attract potential victims to the campus and football events by allowing him to have continued, unrestricted and unsupervised access to the University's facilities and affiliation with the University's prominent football program. Indeed, that continued access provided Sandusky with the very currency that enabled him to attract his victims. Some coaches, administrators and football program staff members ignored the red flags of Sandusky's behaviors and no one warned the public about him.

By not promptly and fully advising the Board of Trustees about the 1998 and 2001 child sexual abuse allegations against Sandusky and the subsequent Grand Jury investigation of him, Spanier failed in his duties as President. The Board also failed in its duties to oversee the President and senior University officials in 1998 and 2001 by not inquiring about important University matters and by not creating an environment where senior University officials felt accountable.

Once the Board was made aware of the investigations of Sandusky and the fact that senior University officials had testified before the Grand Jury in the investigations, it should have recognized the potential risk to the University community and to the University's reputation. Instead, the Board, as a governing body, failed to inquire reasonably and to demand detailed information from Spanier. The Board's overconfidence in Spanier's abilities to deal with the crisis, and its complacent attitude left them unprepared to respond to the November 2011 criminal charges filed against two senior Penn State leaders and a former prominent coach. Finally, the Board's subsequent removal of Paterno as head football coach was poorly handled, as were the Board's communications with the public.

Spanier, Schultz, Paterno and Curley gave the following reasons for taking no action to identify the February 9, 2001 child victim and for not reporting Sandusky to the authorities:

- Through counsel, Curley and Schultz stated that the "humane" thing to do in 2001 was to carefully and responsibly assess the best way to handle vague but

troubling allegations. According to their counsel, these men were good people trying to do their best to make the right decisions.²

- Paterno told a reporter that “I didn’t know exactly how to handle it and I was afraid to do something that might jeopardize what the university procedure was. So I backed away and turned it over to some other people, people I thought would have a little more expertise than I did. It didn’t work out that way.”³
- Spanier said, in his interview with the Special Investigative Counsel, that he never heard a report from anyone that Sandusky was engaged in any sexual abuse of children. He also said that if he had known or suspected that Sandusky was abusing children, he would have been the first to intervene.⁴

Taking into account the available witness statements and evidence, the Special Investigative Counsel finds that it is more reasonable to conclude that, in order to avoid the consequences of bad publicity, the most powerful leaders at the University – Spanier, Schultz, Paterno and Curley – repeatedly concealed critical facts relating to Sandusky’s child abuse from the authorities, the University’s Board of Trustees, the Penn State community, and the public at large.

The avoidance of the consequences of bad publicity is the most significant, but not the only, cause for this failure to protect child victims and report to authorities. The investigation also revealed:

- A striking lack of empathy for child abuse victims by the most senior leaders of the University.
- A failure by the Board to exercise its oversight functions in 1998 and 2001 by not having regular reporting procedures or committee structures in place to ensure disclosure to the Board of major risks to the University.
- A failure by the Board to make reasonable inquiry in 2011 by not demanding details from Spanier and the General Counsel about the nature and direction of the grand jury investigation and the University’s response to the investigation.
- A President who discouraged discussion and dissent.
- A lack of awareness of child abuse issues, the Clery Act, and whistleblower policies and protections.

- A decision by Spanier, Schultz, Paterno and Curley to allow Sandusky to retire in 1999, not as a suspected child predator, but as a valued member of the Penn State football legacy, with future “visibility” at Penn State and ways “to continue to work with young people through Penn State,” essentially granting him license to bring boys to campus facilities for “grooming” as targets for his assaults. Sandusky retained unlimited access to University facilities until November 2011.
- A football program that did not fully participate in, or opted out, of some University programs, including Clery Act compliance. Like the rest of the University, the football program staff had not been trained in their Clery Act responsibilities and most had never heard of the Clery Act.
- A culture of reverence for the football program that is ingrained at all levels of the campus community.

RECOMMENDATIONS FOR UNIVERSITY GOVERNANCE, ADMINISTRATION, AND THE PROTECTION OF CHILDREN IN UNIVERSITY FACILITIES AND PROGRAMS

From the results of interviews with representatives of the University’s Office of Human Resources, Office of Internal Audit, Office of Risk Management, Intercollegiate Athletics, Commonwealth Campuses, Outreach, the President’s Council, Faculty Senate representatives and the Board of Trustees, and benchmarking similar practices at other large universities, the Special Investigative Counsel developed 120 recommendations for consideration by University administrators and the Board in the following eight areas:

- The Penn State Culture
- Administration and General Counsel: Structure, Policies and Procedures
- Board of Trustees: Responsibilities and Operations
- Compliance: Risk and Reporting Misconduct
- Athletic Department: Integration and Compliance
- University Police Department: Oversight, Policies and Procedures
- Programs for Non-Student Minors and Access to Facilities
- Monitoring Change and Measuring Improvement

These recommendations are detailed in Chapter 10 of this report, and include several that the Special Investigative Counsel recommended to the Board in January 2012. The recommendations made at that time were designed to assist the University in preparing for its upcoming summer programs for children.

These steps should assist the University in improving structures, policies and procedures that are related to the protection of children. Some of these recommendations will help the University more fully comply with federal and state laws and regulations dealing with the protection of children. Other recommendations support changes in the structure and operations of the Board, or promote enhancements to administrative processes and procedures. Most importantly, the recommendations should create a safer environment for young people who participate in its programs and use its facilities.

One of the most challenging of the tasks confronting the Penn State community is transforming the culture that permitted Sandusky's behavior, as illustrated throughout this report, and which directly contributed to the failure of Penn State's most powerful leaders to adequately report and respond to the actions of a serial sexual predator. It is up to the entire University community – students, faculty, staff, alumni, the Board, and the administration – to undertake a thorough and honest review of its culture. The current administration and Board of Trustees should task the University community, including students, faculty, staff, alumni, and peers from similar institutions and outside experts in ethics and communications, to conduct such a review. The findings from such a review may well demand further changes.

EXHIBIT D

IN THE COURT OF COMMONS PLEAS OF
CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

THE ESTATE OF JOSEPH
PATERNO, et al.,

Plaintiffs,

vs.

No. 2013-2082

NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION,
("NCAA"), et al.,

Defendants.

VIDEO DEPOSITION OF DAVID BERST
Taken on behalf of the Plaintiffs
August 5, 2015

Saundra Tippins, CCR

(The deposition began at 9:40 a.m.)

1

2 QUESTIONS BY:

PAGE NO.

3 MS. MAHER

6

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INDEX OF EXHIBITS

6

7 EXHIBIT
NO.

DESCRIPTION

PAGE

8 Exhibit 26	Transcript	8
9 Exhibit 27	Manual Division 1 2011/2012	20
10 Exhibit 28	NCAA00008080	38
11 Exhibit 29	NCAA00008147	44
12 Exhibit 30	NCAA000049462	49
13 Exhibit 31	NCAA000049131	72
14 Exhibit 32	PSUCO02739	114
15 Exhibit 33	PSUCO02717	116
16 Exhibit 34	PSUCO02749	118

17

18

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1 IN THE COURT OF COMMONS PLEAS OF
2 CENTRE COUNTY, PENNSYLVANIA
3 CIVIL ACTION - LAW

4 THE ESTATE OF JOSEPH
5 PATERNO, et al.,

6 Plaintiffs,

7 vs.

8 No. 2013-2082

9 NATIONAL COLLEGIATE
10 ATHLETIC ASSOCIATION,
11 ("NCAA"), et al.,

12 Defendants.

13 VIDEO DEPOSITION OF DAVID BERST,
14 produced, sworn, and examined on the 5th day of
15 August, 2015, between the hours of nine o'clock in
16 the forenoon and five o'clock in the afternoon of
17 that day, 1301 Oak Street, Kansas City, Missouri,
18 before SAUNDRA TIPPINS, a Notary Public, and
19 Certified Court Reporter within and for the States
20 of Missouri and Kansas, in a certain cause now
21 pending before the Court of Common Please of Centre
22 County, Pennsylvania, wherein THE ESTATE OF JOSEPH
23 PATERNO, et al., are the Plaintiffs, and NATIONAL
24 COLLEGIATE ATHLETIC ASSOCIATION ("NCAA"), et al.,
25 are the Defendants.

1 Q And under Article 32 of the NCAA
2 bylaws, when an investigation is being conducted,
3 the interviews have to be recorded and summarized,
4 and then the staff is supposed to try to obtain a
5 signature from the witness to the interview
6 summary. Is that correct?

7 A Well, I don't know if I want to go
8 into all of the preciseness of what's necessary,
9 because there are probably exceptions to every,
10 every one of those policies in some, some setting.

11 But all of that, I don't follow the line
12 of questioning, because enforcement policies and
13 practices, the enforcement program was not used
14 in this case. That was the whole point, that the
15 university and the executive committee could
16 arrive at a set of statements that the university
17 accepted responsibility for, which then would
18 leave the executive committee the opportunity to
19 develop the penalties that it believed were
20 appropriate to be accepted by the university.

21 So the university always had the
22 opportunity to reject, you know, anything about
23 that. So the line of questioning about all of
24 the trappings of Bylaws 19 and 32 have no
25 relevance to this.

1 CERTIFICATE OF REPORTER

2 I, Saundra Tippins, Certified Court Reporter,
3 Notary Public within and for the State of Missouri,
4 do hereby certify that the witness whose testimony
5 appears in the foregoing deposition was duly sworn
6 by me; the testimony of said witness was taken by
7 me to the best of my ability and thereafter reduced
8 to typewriting under my direction; that I am
9 neither counsel for, related to, nor employed by
10 any of the parties to the action in which this
11 deposition was taken, and further that I am not a
12 relative or employee of any attorney or counsel
13 employed by the parties thereto, nor financially or
14 otherwise interested in the outcome of the action.

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21 Notary Public within and for
22 the State of Missouri

23 My commission expires

24

25

EXHIBIT E

JAKE CORMAN, in his official)
capacity as Senator from the)
34th Senatorial District of)
Pennsylvania and Chair of the)
Senate Committee on)
Appropriations; and ROBERT M.)
McCORMACK, in his official)
capacity as Treasurer of the) Case No.
Commonwealth of Pennsylvania,) 1 M.D. 2013

VS.

Defendant,

vs.

Defendant.

JOB NO. 86747

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November 13, 2014

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9:05 a.m.

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Deposition of SHEPARD COOPER, at the
offices of Barnes & Thornburg, LLP, 11 South
Meridian Street, Indianapolis, Indiana,
pursuant to subpoena before Rachel F.
Gard, Illinois Certified Shorthand Reporter,
Registered Professional Reporter, Certified
LiveNote Reporter, Certified Realtime Reporter,
Indiana Notary Public.

1 Mischaracterizes testimony. 10:18

2 A. Again, before the Freeh Report, my 10:18
3 opinion, again, this was not something I shared 10:18
4 with anyone in leadership in the national 10:18
5 office, was it was probably a criminal matter 10:18
6 best handled by local law enforcement. Again, 10:18
7 that changed with the Freeh Report. 10:18

8 Q. That's the question I wanted to ask. 10:18
9 Then after reading the Freeh Report, your view 10:18
10 changed or your opinion changed and you thought 10:18
11 it could be or should be an enforcement matter 10:18
12 or an infractions matter to come before the 10:18
13 committee on infractions? 10:18

14 A. I thought the NCAA should do 10:18
15 something. Whether it was through enforcement 10:18
16 or through the governing committees, something 10:18
17 should be done to address this situation. The 10:18
18 whole enforcement process is overseen by, in 10:18
19 Division I, by the board of directors. So they 10:19
20 have the authority to do what they think is 10:19
21 appropriate with regard to enforcement 10:19
22 infractions issues. 10:19

23 Q. The Penn State matter never came 10:19
24 before the committee on infractions; is that 10:19
25 correct? 10:19

1 MS. GRAGERT: Object to the form. 10:19

2 A. Yes, that's correct. 10:19

3 Q. And to your knowledge, there was 10:19

4 never an enforcement investigation commenced 10:19

5 with regard to Penn State? 10:19

6 MS. GRAGERT: Object to the form. 10:19

7 A. Again, to my knowledge. But I'm not 10:20

8 with the enforcement staff any longer. I can't 10:20

9 speak to exactly what, if anything, happened 10:20

10 with regard to the enforcement staff in this 10:20

11 matter. 10:20

12 Q. What is your understanding of how 10:20

13 the NCAA handled the issues and allegations 10:20

14 arising with regard to Penn State? 10:20

15 A. There was a consent decree, I 10:20

16 believe it was called. Again, I'm not an 10:20

17 attorney, but I believe the title was consent 10:20

18 decree. It was entered into between the NCAA 10:20

19 and a member institution, Penn State. And Penn 10:20

20 State agreed to the consent decree. And that's 10:20

21 the extent of my knowledge. 10:20

22 Q. I believe you had mentioned this 10:20

23 earlier in describing the infractions process. 10:20

24 Once the infraction process starts, there's a 10:20

25 summary disposition track the cases can go 10:21

1 C E R T I F I C A T E

2 STATE OF ILLINOIS)
) ss.:

3 COUNTY OF COOK)

4 I, RACHEL F. GARD, CSR, RPR, CLR, CRR,
5 within and for the State of Illinois do hereby
6 certify:

7 That SHEPARD COOPER, the witness whose
8 deposition is hereinbefore set forth, was
9 duly sworn by me and that such deposition
10 is a true record of the testimony given by
11 such witness.

12 I further certify that I am not
13 related to any of the parties to this
14 action by blood or marriage; and that I am
15 in no way interested in the outcome of this
16 matter.

17 IN WITNESS WHEREOF, I have hereunto
18 set my hand this 13th day of November, 2014.

19

20 -----

21 RACHEL F. GARD, CSR, RPR, CLR, CRR

22

23

24

25

EXHIBIT F

09:08

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JAKE CORMAN, in his official)
capacity as Senator from the)
34th Senatorial District of)
Pennsylvania and Chair of the)
Senate Committee on)
Appropriations; and ROBERT M.)
McCORD, in his official)
capacity as Treasurer of the) Case No.
Commonwealth of Pennsylvania,) 1 M.D. 2013

Plaintiffs,

vs.

NATIONAL COLLEGIATE ATHLETIC
ASSOCIATION,

Defendant,

vs.

PENNSYLVANIA STATE UNIVERSITY,

Defendant.

DEPOSITION OF DAVID BERST
Indianapolis, Indiana
Wednesday, November 12, 2014

Reported by:

RACHEL F. GARD, CSR, RPR, CLR, CRR

JOB NO. 86746

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November 12, 2014

9:05 a.m.

Deposition of DAVID BERST, at the offices
of Barnes & Thornburg, 11 South Meridian
Street, Suite 200, Indianapolis, Indiana,
pursuant to subpoena before Rachel F. Gard,
Illinois Certified Shorthand Reporter,
Registered Professional Reporter, Certified
LiveNote Reporter, Certified Realtime Reporter,
Indiana Notary Public.

1 before that the only case where we would have 04:46
2 crossed paths would have been during the time 04:46
3 he was a faculty representative at the 04:46
4 University of Alabama. 04:46

5 Q. No, I didn't recall that. Okay. 04:46

6 With respect to the bylaws, where is 04:46
7 the authority for the imposition of a monetary 04:46
8 sanction of the quantum that was imposed on 04:46
9 Penn State? 04:46

10 A. Financial penalties are provided for 04:46
11 in the list of major infractions kinds of 04:46
12 penalties. That would have no bearing on this 04:46
13 case, because as I've said to you several 04:46
14 times, this had nothing to do with the 04:46
15 enforcement process. 04:46

16 So a monetary penalty that's a part 04:46
17 of the consent decree and penalty agreed to 04:47
18 between the NCAA and Penn State University, 04:47
19 needs no authority somewhere in the NCAA manual 04:47
20 to agree to, in my opinion. 04:47

21 Q. It is dependent solely on the 04:47
22 executive committee's authority to impose 04:47
23 penalties outside the penalty process? 04:47

24 MR. KOWALSKI: Objection to the 04:47
25 form. 04:47

C E R T I F I C A T E

STATE OF ILLINOIS)

) ss.:

COUNTY OF COOK)

I, RACHEL F. GARD, CSR, RPR, CLR, CRR,
within and for the State of Illinois do hereby
certify:

That DAVID BERST, the witness whose
deposition is hereinbefore set forth, was
duly sworn by me and that such deposition
is a true record of the testimony given by
such witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage; and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 13th day of November, 2014.

RACHEL F. GARD, CSR, RPR, CLR, CRR

CERTIFICATE OF SERVICE

I, Thomas W. Scott, hereby certify that I am serving *The NCAA's Objections to Plaintiffs' Proposed Subpoena* on the following by First Class Mail and email:

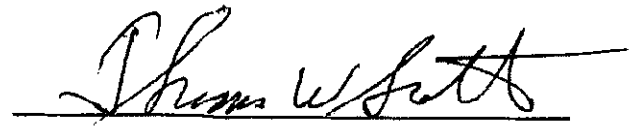
Thomas J. Weber, Esquire
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P.O. Box 6991
Harrisburg, PA 17112
Telephone: (717) 234-4161
Email: tjw@goldbergkatzman.com

Wick Sollers, Esquire
L. Joseph Loveland, Esquire
Mark A. Jensen, Esquire
Patricia L. Maher, Esquire
Ashley C. Parrish, Esquire
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500
Email: wsollers@kslaw.com
iloveland@kslaw.com
mjensen@kslaw.com
pmaher@kslaw.com
aparrish@kslaw.com

Counsel for Plaintiffs

Via FedEx Overnight Delivery
The Honorable John B. Leete
Senior Judge, Specially Presiding
Potter County Courthouse, Room 30
One East Second Street
Coudersport, PA 16915

Dated: February 18, 2016

A handwritten signature in black ink, appearing to read "Thomas W. Scott", is written over a horizontal line.

Thomas W. Scott
KILLIAN & GEPHART, LLP
218 Pine Street
P.O. Box 886
Harrisburg, PA 17108-0886
Telephone: (717) 232-1851
Email: tscott@killiangephart.com

*Counsel for the NCAA, Dr. Emmert,
and Dr. Ray*

Exhibit 8

**IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO, et al.	:	CIVIL ACTION – LAW
	:	
Plaintiffs	:	DOCKET NO.: 2013-2082
	:	
v.	:	
	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION ("NCAA"), et al.	:	
	:	
Defendants	:	

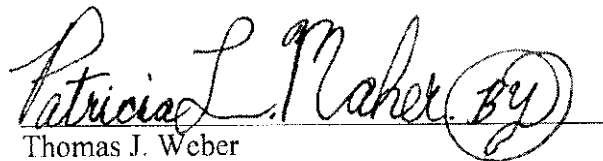
**NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE
DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21**

Plaintiffs the Estate of Joseph Paterno, William Kenney and Joseph V. ("Jay") Paterno, by and through their undersigned counsel, intend to serve subpoenas identical to those that are attached to this Notice on the following people:

1. Melissa Conboy
2. Jack H. Friedenthal
3. Christopher L. Griffin
4. Roscoe C. Howard, Jr
5. W. Anthony Jenkins
6. Susan Cross Lipnickey
7. Eleanor W. Myers
8. James O'Fallon
9. Patricia C. Ohlendorf
10. Greg Sankey
11. Dennis E. Thomas
12. Rodney J. Uphoff
13. David Williams II

You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made the subpoena may be served.

Dated this 29th day of January, 2016


Thomas J. Weber
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P. O. Box 6991
Harrisburg, PA 17112

Telephone: (717) 234-4161
Wick Sollers
L. Joseph Loveland
Mark A. Jensen
Ashley C. Parrish
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **NOTICE OF INTENT TO SERVE A SUBPOENA TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21** was served this 29th day of January, 2016 by email and first class mail to the following:

Thomas W. Scott
Killian & Gephart
218 Pine Street
P.O. Box 886
Harrisburg, PA 17108-0886
Email: tscott@killiangephart.com

Everett C. Johnson, Jr.
Brian E. Kowalski
Sarah M. Gragert
Latham & Watkins LLP
555-11th Street, N.W.
Suite 1000
Washington, D.C. 20004-1304
Email: everett.johnson@lw.com
brian.kowalski@lw.com
sarah.gragert@lw.com

Dated this 29th day of January, 2016

A handwritten signature in black ink, appearing to read "Thomas J. Weber", with a large circular flourish at the end.

Thomas J. Weber
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P. O. Box 6991
Harrisburg, PA 17112
Telephone: (717) 234-4161

Wick Sollers
L. Joseph Loveland
Mark A. Jensen
Ashley C. Parrish
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500

Counsel for Plaintiffs

**IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO, et al.	:	CIVIL ACTION – LAW
	:	
Plaintiffs	:	DOCKET NO.: 2013-2082
	:	
v.	:	
	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA”), et al.	:	
	:	
Defendants	:	

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.22**

To: Melissa Conboy
 Athletics Department
 University of Notre Dame
 C113 Joyce Center
 Notre Dame, Indiana 46556

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:

the documents described in Attachment A

at

Patricia L. Maher
King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

Name: Patricia L. Maher

Address: King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

Telephone: 202-626-5504

Supreme Court ID #: Admitted pro hac vice

Attorney for: Plaintiffs

BY THE COURT:

DATE: _____

By _____
(Prothonotary)

Seal of the Court

ATTACHMENT A

For the period January 1, 2011, through December 31, 2015, all documents, including but not limited to memoranda, notes of telephone conversations, handwritten notes, emails from any email account (including but not limited to non-work email accounts such as Gmail or Yahoo Mail) and text messages or short message service (SMS) messages, that evidence, reflect or relate in any way to the following:

- (a) the Penn State football program and/or Penn State employees, football coaches (including, but not limited to, Joseph Paterno, Jay Paterno, and William Kenney), Board of Trustees members, administrators, or agents;
- (b) the NCAA Consent Decree, titled "Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University," dated July 23, 2012, including, but not limited to, drafts of the Consent Decree and any documents that relate in any way to the repeal, dissolution, modification and/or superseding of the Consent Decree, such as the NCAA's January 2015 repeal of the Consent Decree and the superseding Athletics Integrity Agreement that the NCAA terminated in December 2015;
- (c) the decision-making, evaluation, assessment, basis for, and/or process relating to consideration, imposition, or acceptance of any penalty, sanction, violation, and/or infraction of the NCAA's rules, bylaws and/or Constitution by Penn State, its administration, employees, football coaches, Board of Trustee members and/or agents. This request includes, but is not limited to, documents related to disagreements, concerns, objections, questions and/or discussions by the NCAA about the authority and/or jurisdiction of the NCAA to impose such penalty, sanction, violation, and/or infraction, as well as documents related to any repeal, dissolution, modification and/or superseding treatment of such penalty, sanction, violation and/or infraction; and
- (d) the Freeh Report, titled "Report of the Special Investigative Counsel Regarding the Actions of the Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky," prepared by Freeh Sporkin & Sullivan, LLP, and any other actual or stated basis for the statements contained in the Consent Decree.

**IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO, et al.	:	CIVIL ACTION – LAW
	:	
Plaintiffs	:	DOCKET NO.: 2013-2082
	:	
v.	:	
	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA”), et al.	:	
	:	
Defendants	:	

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.22**

To: Jack H. Friedenthal
The George Washington University Law School
2000 H Street NW
Washington, District of Columbia 20052

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:

the documents described in Attachment A

at

Patricia L. Maher
King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

Name: Patricia L. Maher

Address: King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

Telephone: 202-626-5504

Supreme Court ID #: Admitted pro hac vice

Attorney for: Plaintiffs

BY THE COURT:

DATE: _____

By _____
(Prothonotary)

Seal of the Court

ATTACHMENT A

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- (a) the Penn State football program and/or Penn State employees, football coaches (including, but not limited to, Joseph Paterno, Jay Paterno, and William Kenney), Board of Trustees members, administrators, or agents;
- (b) the NCAA Consent Decree, titled "Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University," dated July 23, 2012, including, but not limited to, drafts of the Consent Decree and any documents that relate in any way to the repeal, dissolution, modification and/or superseding of the Consent Decree, such as the NCAA's January 2015 repeal of the Consent Decree and the superseding Athletics Integrity Agreement that the NCAA terminated in December 2015;
- (c) the decision-making, evaluation, assessment, basis for, and/or process relating to consideration, imposition, or acceptance of any penalty, sanction, violation, and/or infraction of the NCAA's rules, bylaws and/or Constitution by Penn State, its administration, employees, football coaches, Board of Trustee members and/or agents. This request includes, but is not limited to, documents related to disagreements, concerns, objections, questions and/or discussions by the NCAA about the authority and/or jurisdiction of the NCAA to impose such penalty, sanction, violation, and/or infraction, as well as documents related to any repeal, dissolution, modification and/or superseding treatment of such penalty, sanction, violation and/or infraction; and
- (d) the Freeh Report, titled "Report of the Special Investigative Counsel Regarding the Actions of the Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky," prepared by Freeh Sporkin & Sullivan, LLP, and any other actual or stated basis for the statements contained in the Consent Decree.

**IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO, et al.	:	CIVIL ACTION – LAW
	:	
Plaintiffs	:	DOCKET NO.: 2013-2082
	:	
v.	:	
	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA”), et al.	:	
	:	
Defendants	:	

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.22**

To: Christopher L. Griffin
Foley & Lardner LLP
100 North Tampa Street, Suite 2700
Tampa, Florida 33602

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:

the documents described in Attachment A

at

Patricia L. Maher
King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

Name: Patricia L. Maher

Address: King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

Telephone: 202-626-5504

Supreme Court ID #: Admitted pro hac vice

Attorney for: Plaintiffs

BY THE COURT:

DATE: _____

By _____
(Prothonotary)

Seal of the Court

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- (b) the NCAA Consent Decree, titled "Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University," dated July 23, 2012, including, but not limited to, drafts of the Consent Decree and any documents that relate in any way to the repeal, dissolution, modification and/or superseding of the Consent Decree, such as the NCAA's January 2015 repeal of the Consent Decree and the superseding Athletics Integrity Agreement that the NCAA terminated in December 2015;
- (c) the decision-making, evaluation, assessment, basis for, and/or process relating to consideration, imposition, or acceptance of any penalty, sanction, violation, and/or infraction of the NCAA's rules, bylaws and/or Constitution by Penn State, its administration, employees, football coaches, Board of Trustee members and/or agents. This request includes, but is not limited to, documents related to disagreements, concerns, objections, questions and/or discussions by the NCAA about the authority and/or jurisdiction of the NCAA to impose such penalty, sanction, violation, and/or infraction, as well as documents related to any repeal, dissolution, modification and/or superseding treatment of such penalty, sanction, violation and/or infraction; and
- (d) the Freeh Report, titled "Report of the Special Investigative Counsel Regarding the Actions of the Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky," prepared by Freeh Sporkin & Sullivan, LLP, and any other actual or stated basis for the statements contained in the Consent Decree.

**IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO, et al.	:	CIVIL ACTION – LAW
	:	
Plaintiffs	:	DOCKET NO.: 2013-2082
	:	
v.	:	
	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA”), et al.	:	
	:	
Defendants	:	

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.22**

To: Roscoe C. Howard, Jr.
Barnes & Thornburg LLP
1717 Pennsylvania Avenue NW
Washington, District of Columbia 20006

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:

the documents described in Attachment A

at

Patricia L. Maher
King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

Name: Patricia L. Maher

Address: King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

Telephone: 202-626-5504

Supreme Court ID #: Admitted pro hac vice

Attorney for: Plaintiffs

BY THE COURT:

DATE: _____

By _____
(Prothonotary)

Seal of the Court

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- (a) the Penn State football program and/or Penn State employees, football coaches (including, but not limited to, Joseph Paterno, Jay Paterno, and William Kenney), Board of Trustees members, administrators, or agents;
- (b) the NCAA Consent Decree, titled "Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University," dated July 23, 2012, including, but not limited to, drafts of the Consent Decree and any documents that relate in any way to the repeal, dissolution, modification and/or superseding of the Consent Decree, such as the NCAA's January 2015 repeal of the Consent Decree and the superseding Athletics Integrity Agreement that the NCAA terminated in December 2015;
- (c) the decision-making, evaluation, assessment, basis for, and/or process relating to consideration, imposition, or acceptance of any penalty, sanction, violation, and/or infraction of the NCAA's rules, bylaws and/or Constitution by Penn State, its administration, employees, football coaches, Board of Trustee members and/or agents. This request includes, but is not limited to, documents related to disagreements, concerns, objections, questions and/or discussions by the NCAA about the authority and/or jurisdiction of the NCAA to impose such penalty, sanction, violation, and/or infraction, as well as documents related to any repeal, dissolution, modification and/or superseding treatment of such penalty, sanction, violation and/or infraction; and
- (d) the Freeh Report, titled "Report of the Special Investigative Counsel Regarding the Actions of the Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky," prepared by Freeh Sporkin & Sullivan, LLP, and any other actual or stated basis for the statements contained in the Consent Decree.

**IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO, et al.	: CIVIL ACTION – LAW
	:
Plaintiffs	: DOCKET NO.: 2013-2082
	:
v.	:
	:
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA”), et al.	:
	:
Defendants	:

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.22**

To: W. Anthony Jenkins
Dickson Wright PLLC
500 Woodward Avenue
Detroit, Michigan 48226

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:

the documents described in Attachment A

at

Patricia L. Maher
King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

Name: Patricia L. Maher

Address: King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

Telephone: 202-626-5504

Supreme Court ID #: Admitted pro hac vice

Attorney for: Plaintiffs

BY THE COURT:

DATE: _____

By _____
(Prothonotary)

Seal of the Court

ATTACHMENT A

For the period January 1, 2011, through December 31, 2015, all documents, including but not limited to memoranda, notes of telephone conversations, handwritten notes, emails from any email account (including but not limited to non-work email accounts such as Gmail or Yahoo Mail) and text messages or short message service (SMS) messages, that evidence, reflect or relate in any way to the following:

- (a) the Penn State football program and/or Penn State employees, football coaches (including, but not limited to, Joseph Paterno, Jay Paterno, and William Kenney), Board of Trustees members, administrators, or agents;
- (b) the NCAA Consent Decree, titled "Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University," dated July 23, 2012, including, but not limited to, drafts of the Consent Decree and any documents that relate in any way to the repeal, dissolution, modification and/or superseding of the Consent Decree, such as the NCAA's January 2015 repeal of the Consent Decree and the superseding Athletics Integrity Agreement that the NCAA terminated in December 2015;
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**IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO, et al.	:	CIVIL ACTION – LAW
	:	
Plaintiffs	:	DOCKET NO.: 2013-2082
	:	
v.	:	
	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA”), et al.	:	
	:	
Defendants	:	

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.22**

To: Susan Cross Lipnickey
Xavier University
Athletics Department
3800 Victory Parkway
Cincinnati, Ohio 45207

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:

the documents described in Attachment A

at

Patricia L. Maher
King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

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Name: Patricia L. Maher

Address: King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

Telephone: 202-626-5504

Supreme Court ID #: Admitted pro hac vice

Attorney for: Plaintiffs

BY THE COURT:

DATE: _____

By _____
(Prothonotary)

Seal of the Court

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**IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO, et al.	:	CIVIL ACTION – LAW
	:	
Plaintiffs	:	DOCKET NO.: 2013-2082
	:	
v.	:	
	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA”), et al.	:	
	:	
Defendants	:	

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.22**

To: Eleanor W. Myers
Temple University
Beasley School of Law
Klein Hall, Room 624
1719 North Broad Street
Philadelphia, Pennsylvania 19122

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:

the documents described in Attachment A

at

Patricia L. Maher
King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

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Address: King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

Telephone: 202-626-5504

Supreme Court ID #: Admitted pro hac vice

Attorney for: Plaintiffs

BY THE COURT:

DATE: _____

By _____
(Prothonotary)

Seal of the Court

ATTACHMENT A

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**IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO, et al.	:	CIVIL ACTION – LAW
	:	
Plaintiffs	:	DOCKET NO.: 2013-2082
	:	
v.	:	
	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA”), et al.	:	
	:	
Defendants	:	

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.22**

To: James O’Fallon
Sports Conflict Institute
2097 Dogwood Drive
Eugene, Oregon 97405

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:

the documents described in Attachment A

at

Patricia L. Maher
King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, DC 20006

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This subpoena was issued at the request of the following person:

Name: Patricia L. Maher

Address: King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

Telephone: 202-626-5504

Supreme Court ID #: Admitted pro hac vice

Attorney for: Plaintiffs

BY THE COURT:

DATE: _____

By _____
(Prothonotary)

Seal of the Court

ATTACHMENT A

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**IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO, et al.	:	CIVIL ACTION – LAW
	:	
Plaintiffs	:	DOCKET NO.: 2013-2082
	:	
v.	:	
	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA”), et al.	:	
	:	
Defendants	:	

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.22**

To: Patricia C. Ohlendorf
Office of the Vice President for Legal Affairs
University of Texas at Austin
2304 Whitis Avenue
Flawn Academic Center, Room 438
Austin, Texas 78712

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:

the documents described in Attachment A

at

Patricia L. Maher
King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

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This subpoena was issued at the request of the following person:

Name: Patricia L. Maher

Address: King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

Telephone: 202-626-5504

Supreme Court ID #: Admitted pro hac vice

Attorney for: Plaintiffs

BY THE COURT:

DATE: _____

By _____
(Prothonotary)

Seal of the Court

ATTACHMENT A

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**IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO, et al.	:	CIVIL ACTION – LAW
	:	
Plaintiffs	:	DOCKET NO.: 2013-2082
	:	
v.	:	
	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA”), et al.	:	
	:	
Defendants	:	

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.22**

To: Greg Sankey
Southeastern Conference
2201 Richard Arrington Jr. Boulevard North
Birmingham, Alabama 35203

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:

the documents described in Attachment A

at

Patricia L. Maher
King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

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Name: Patricia L. Maher

Address: King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

Telephone: 202-626-5504

Supreme Court ID #: Admitted pro hac vice

Attorney for: Plaintiffs

BY THE COURT:

DATE: _____

By _____
(Prothonotary)

Seal of the Court

ATTACHMENT A

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**IN THE COURT OF COMMON PLEAS OF
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The ESTATE of JOSEPH PATERNO, et al.	: CIVIL ACTION – LAW
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Plaintiffs	: DOCKET NO.: 2013-2082
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v.	:
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	:
Defendants	:

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.22**

To: Dennis E. Thomas
Mid-Eastern Athletic Conference
2730 Ellsmere Avenue
Norfolk, Virginia 23513

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at

Patricia L. Maher
King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
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Telephone: 202-626-5504

Supreme Court ID #: Admitted pro hac vice

Attorney for: Plaintiffs

BY THE COURT:

DATE: _____

By _____
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**IN THE COURT OF COMMON PLEAS OF
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The ESTATE of JOSEPH PATERNO, et al.	:	CIVIL ACTION – LAW
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Plaintiffs	:	DOCKET NO.: 2013-2082
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v.	:	
	:	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA”), et al.	:	
	:	
Defendants	:	

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.22**

To: Rodney J. Uphoff
University of Missouri—Columbia
School of Law
213 Hulston Hall
Columbia, Missouri 65211

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Patricia L. Maher
King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
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Washington, D. C. 20006

Telephone: 202-626-5504

Supreme Court ID #: Admitted pro hac vice

Attorney for: Plaintiffs

BY THE COURT:

DATE: _____

By _____
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- (a) the Penn State football program and/or Penn State employees, football coaches (including, but not limited to, Joseph Paterno, Jay Paterno, and William Kenney), Board of Trustees members, administrators, or agents;
- (b) the NCAA Consent Decree, titled "Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University," dated July 23, 2012, including, but not limited to, drafts of the Consent Decree and any documents that relate in any way to the repeal, dissolution, modification and/or superseding of the Consent Decree, such as the NCAA's January 2015 repeal of the Consent Decree and the superseding Athletics Integrity Agreement that the NCAA terminated in December 2015;
- (c) the decision-making, evaluation, assessment, basis for, and/or process relating to consideration, imposition, or acceptance of any penalty, sanction, violation, and/or infraction of the NCAA's rules, bylaws and/or Constitution by Penn State, its administration, employees, football coaches, Board of Trustee members and/or agents. This request includes, but is not limited to, documents related to disagreements, concerns, objections, questions and/or discussions by the NCAA about the authority and/or jurisdiction of the NCAA to impose such penalty, sanction, violation, and/or infraction, as well as documents related to any repeal, dissolution, modification and/or superseding treatment of such penalty, sanction, violation and/or infraction; and
- (d) the Freeh Report, titled "Report of the Special Investigative Counsel Regarding the Actions of the Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky," prepared by Freeh Sporkin & Sullivan, LLP, and any other actual or stated basis for the statements contained in the Consent Decree.

**IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA**

The ESTATE of JOSEPH PATERNO, et al.	: CIVIL ACTION – LAW
	:
Plaintiffs	: DOCKET NO.: 2013-2082
	:
v.	:
	:
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (“NCAA”), et al.	:
	:
Defendants	:

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.22**

To: David Williams II
Athletics Department
Vanderbilt University
2601 Jess Neely Drive
Nashville, Tennessee 37212

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things:

the documents described in Attachment A

at

Patricia L. Maher
King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

This subpoena was issued at the request of the following person:

Name: Patricia L. Maher

Address: King & Spalding LLP
1700 Pennsylvania Avenue, N.W.
Suite 200
Washington, D. C. 20006

Telephone: 202-626-5504

Supreme Court ID #: Admitted pro hac vice

Attorney for: Plaintiffs

BY THE COURT:

DATE: _____

By _____
(Prothonotary)

Seal of the Court

ATTACHMENT A

For the period January 1, 2011, through December 31, 2015, all documents, including but not limited to memoranda, notes of telephone conversations, handwritten notes, emails from any email account (including but not limited to non-work email accounts such as Gmail or Yahoo Mail) and text messages or short message service (SMS) messages, that evidence, reflect or relate in any way to the following:

- (a) the Penn State football program and/or Penn State employees, football coaches (including, but not limited to, Joseph Paterno, Jay Paterno, and William Kenney), Board of Trustees members, administrators, or agents;
- (b) the NCAA Consent Decree, titled "Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University," dated July 23, 2012, including, but not limited to, drafts of the Consent Decree and any documents that relate in any way to the repeal, dissolution, modification and/or superseding of the Consent Decree, such as the NCAA's January 2015 repeal of the Consent Decree and the superseding Athletics Integrity Agreement that the NCAA terminated in December 2015;
- (c) the decision-making, evaluation, assessment, basis for, and/or process relating to consideration, imposition, or acceptance of any penalty, sanction, violation, and/or infraction of the NCAA's rules, bylaws and/or Constitution by Penn State, its administration, employees, football coaches, Board of Trustee members and/or agents. This request includes, but is not limited to, documents related to disagreements, concerns, objections, questions and/or discussions by the NCAA about the authority and/or jurisdiction of the NCAA to impose such penalty, sanction, violation, and/or infraction, as well as documents related to any repeal, dissolution, modification and/or superseding treatment of such penalty, sanction, violation and/or infraction; and
- (d) the Freeh Report, titled "Report of the Special Investigative Counsel Regarding the Actions of the Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky," prepared by Freeh Sporkin & Sullivan, LLP, and any other actual or stated basis for the statements contained in the Consent Decree.

ATTACHMENT A

For the period January 1, 2011, through December 31, 2015, all documents, including but not limited to memoranda, notes of telephone conversations, handwritten notes, emails from any email account (including but not limited to non-work email accounts such as Gmail or Yahoo Mail) and text messages or short message service (SMS) messages, that evidence, reflect or relate in any way to the following:

- (a) the Penn State football program and/or Penn State employees, football coaches (including, but not limited to, Joseph Paterno, Jay Paterno, and William Kenney), Board of Trustees members, administrators, or agents;
- (b) the NCAA Consent Decree, titled "Binding Consent Decree Imposed by the National Collegiate Athletic Association and Accepted by The Pennsylvania State University," dated July 23, 2012, including, but not limited to, drafts of the Consent Decree and any documents that relate in any way to the repeal, dissolution, modification and/or superseding of the Consent Decree, such as the NCAA's January 2015 repeal of the Consent Decree and the superseding Athletics Integrity Agreement that the NCAA terminated in December 2015;
- (c) the decision-making, evaluation, assessment, basis for, and/or process relating to consideration, imposition, or acceptance of any penalty, sanction, violation, and/or infraction of the NCAA's rules, bylaws and/or Constitution by Penn State, its administration, employees, football coaches, Board of Trustee members and/or agents. This request includes, but is not limited to, documents related to disagreements, concerns, objections, questions and/or discussions by the NCAA about the authority and/or jurisdiction of the NCAA to impose such penalty, sanction, violation, and/or infraction, as well as documents related to any repeal, dissolution, modification and/or superseding treatment of such penalty, sanction, violation and/or infraction; and
- (d) the Freeh Report, titled "Report of the Special Investigative Counsel Regarding the Actions of the Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky," prepared by Freeh Sporkin & Sullivan, LLP, and any other actual or stated basis for the statements contained in the Consent Decree.

Exhibit 9

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

ESTATE of JOSEPH PATERNO, et al.,)	
)	
Plaintiffs,	)	Civil Division
)	
v.)	
)	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al.,	)	Docket No. 2013-
	)	2082
Defendants.)	
)	

**THIRD SET OF INTERROGATORIES BY THE NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION TO THE ESTATE OF JOSEPH PATERNO**

The National Collegiate Athletic Association (the “NCAA”), by and through its counsel, hereby propounds, pursuant to Pennsylvania Rule of Civil Procedure No. 4005, the following Interrogatories to the Estate of Joseph Paterno, to be answered separately and fully in writing and under oath within thirty (30) days of service, in accordance with the Instructions and Definitions set forth herein.

DEFINITIONS

As used herein, the words and phrases set forth below shall have the broadest meaning or meanings permitted under Pennsylvania Rule of Civil Procedure No. 4003.1. Unless defined, all words used in these Interrogatories are to be given their plain and ordinary meaning.

1. “You” or “Your” shall mean the Estate of Joseph Paterno, and all other persons acting on behalf of the Estate of Joseph Paterno, including but not limited to, attorneys and their associates, investigators, agents, directors, officers, employees, representatives, and others who may have obtained information for or on behalf of the Estate of Joseph Paterno.

2. “All” or “any” shall mean “each and every.”

3. “And” and “or” shall mean either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed outside of its scope.

4. “[T]hat Concerned” shall mean, without limitation, comprising, containing, embodying, referring to, relating to, regarding, alluding to, responding to, in connection with, commenting on, in response to, about, announcing, explaining, discussing, showing, describing, studying, supporting, reflecting, analyzing, or constituting.

5. “State All Facts” shall mean to state in a complete and straightforward manner those relevant facts known to You or that You can ascertain through a reasonably diligent search, which support Your contention.

6. “Person” shall mean any natural person or any business, legal or governmental entity, or association.

INSTRUCTIONS

The following instructions are applicable throughout these Interrogatories and are incorporated into each specific Interrogatory:

1. Each Interrogatory should be responded to upon Your entire knowledge from all sources and all information in Your possession or otherwise available to You, including information from employees, agents, representatives, consultants, or attorneys, and information which is known to each of them.

2. Each Interrogatory should be construed independently and not with reference to any other Interrogatory for purposes of limitation.

3. These Interrogatories shall be deemed to be continuing so as to require prompt supplemental responses should Your answers change.

4. If a Document is provided in response to an Interrogatory, identify which Document(s) is (are) being provided to answer that Interrogatory; if You are asked to identify Documents, include Bates numbers.

5. If any of the Interrogatories cannot be responded to in full, respond to the extent possible, specifying the reason for Your inability to respond to the remainder. If Your responses are qualified in any respect, set forth the terms and an explanation of each such qualification.

6. If You do not possess knowledge of the requested information, You should so State Your lack of knowledge and describe all efforts made by You to obtain the information necessary to answer the Interrogatory.

7. In no event should You leave any response blank. If the answer to an Interrogatory is, for example, "none," "unknown," or "not applicable," such statement should be written as an answer.

8. If, in answering these Interrogatories, You encounter any ambiguity when construing a question, instruction, or definition, Your answer shall set forth the matter deemed ambiguous and the construction used in answering.

9. All objections shall be set forth with specificity and shall include a brief statement of the grounds for such objection.

INTERROGATORIES

INTERROGATORY NO. 33:

State All Facts that Concerned, supported, or explained, as of August 25, 2015, Your initial representation that “Coach Paterno assigned all rights to his name, image and reputation to JVP Properties, LP in 2010.” See Estate’s Response to NCAA Interrogatory No. 11.

RESPONSE TO INTERROGATORY NO. 33:

INTERROGATORY NO. 34:

State All Facts that Concerned, supported, or explained Your revised representation that “the Estate retains the rights to revenue generated from Coach Paterno’s name or reputation” (*see* Estate’s Revised Response to NCAA Interrogatory No. 11), and State all Facts that explain why You revised Your Response to Interrogatory No. 11.

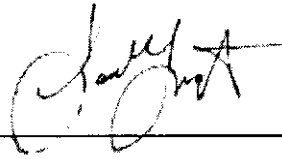
RESPONSE TO INTERROGATORY NO. 34:

INTERROGATORY NO. 35:

State All Facts that support Your contention that the NCAA acted with actual malice, which support your claim for commercial disparagement.

RESPONSE TO INTERROGATORY NO. 35:

Date: January 27, 2016



Sarah M. Gragert (admitted *PHV*, DC No.
977097)

Brian E. Kowalski (admitted *PHV*, DC No.
500064)

Everett C. Johnson, Jr. (admitted *PHV*, DC No.
358446)

LATHAM & WATKINS LLP

555 Eleventh Street NW

Suite 1000

Washington, DC 20004-1304

Telephone: (202) 637-2200

Email: Sarah.Gragert@lw.com

Brian.Kowalski@lw.com

Everett.Johnson@lw.com

Thomas W. Scott (No. 15681)

KILLIAN & GEPHART, LLP

218 Pine Street

P.O. Box 886

Harrisburg, PA 17108-0886

Telephone: (717) 232-1851

Email: tscott@killiangephart.com

Counsel for the NCAA, Dr. Emmert, and Dr. Ray

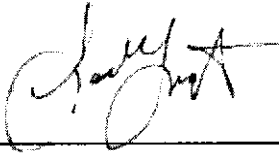
CERTIFICATE OF SERVICE

I, Sarah M. Gragert, hereby certify that on this date, January 27, 2016, I am serving the foregoing *Third Set of Interrogatories by the National Collegiate Athletic Association to the Estate of Joseph Paterno* by First Class Mail and email on the following:

Thomas J. Weber, Esquire
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P.O. Box 6991
Harrisburg, PA 17112
Telephone: (717) 234-4161
Email: tjw@goldbergkatzman.com

Wick Sollers, Esquire
L. Joseph Loveland, Esquire
Mark A. Jensen, Esquire
Patricia L. Maher, Esquire
Ashley C. Parrish, Esquire
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500
Email: wsollers@kslaw.com
jloveland@kslaw.com
mjensen@kslaw.com
pmaher@kslaw.com
aparrish@kslaw.com

Counsel for Plaintiffs



Sarah M. Gragert (admitted *PHV*, DC No. 977097)
LATHAM & WATKINS LLP
555 Eleventh Street NW
Suite 1000
Washington, DC 20004-1304
Telephone: (202) 637-2200
Email: Sarah.Gragert@lw.com

Counsel for the NCAA, Dr. Emmert, and Dr. Ray

Exhibit 10

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

ESTATE of JOSEPH PATERNO, et al.,)	
)	
Plaintiffs,	)	Civil Division
)	
v.)	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al.,	)	Docket No. 2013-
	)	2082
Defendants.)	
)	

**THIRD SET OF INTERROGATORIES BY THE NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION TO PLAINTIFF WILLIAM KENNEY**

The National Collegiate Athletic Association (the "NCAA"), by and through its counsel, hereby propounds, pursuant to Pennsylvania Rule of Civil Procedure No. 4005, the following Interrogatories to Plaintiff William Kenney, to be answered separately and fully in writing and under oath within thirty (30) days of service, in accordance with the Instructions and Definitions set forth herein.

DEFINITIONS

As used herein, the words and phrases set forth below shall have the broadest meaning or meanings permitted under Pennsylvania Rule of Civil Procedure No. 4003.1. Unless defined, all words used in these Interrogatories are to be given their plain and ordinary meaning.

1. "You" or "Your" shall mean William Kenney, and all other persons acting on behalf of William Kenney, including but not limited to, attorneys and their associates, investigators, agents, directors, officers, employees, representatives, and others who may have obtained information for or on behalf of William Kenney.

2. "All" or "any" shall mean "each and every."

3. “And” and “or” shall mean either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed outside of its scope.

4. “State All Facts” shall mean to state in a complete and straightforward manner those relevant facts known to You or that You can ascertain through a reasonably diligent search, which support Your contention.

5. The term “Identify” shall mean:

i. when applicable to a natural person, to state at a minimum his or her full name, last known address and telephone number, and business affiliation(s) and position(s);

ii. when applicable to any entity other than a natural person, to state at a minimum the entity’s full name and the full address of its main office;

iii. when applicable to any payment, fees or services provided, to state and list with particularity the amount and additional information for each.

INSTRUCTIONS

The following instructions are applicable throughout these Interrogatories and are incorporated into each specific Interrogatory:

1. Each Interrogatory should be responded to upon Your entire knowledge from all sources and all information in Your possession or otherwise available to You, including information from employees, agents, representatives, consultants, or attorneys, and information which is known to each of them.

2. Each Interrogatory should be construed independently and not with reference to any other Interrogatory for purposes of limitation.

3. These Interrogatories shall be deemed to be continuing so as to require prompt supplemental responses should Your answers change.

4. If a Document is provided in response to an Interrogatory, identify which Document(s) is (are) being provided to answer that Interrogatory; if You are asked to identify Documents, include Bates numbers.

5. If any of the Interrogatories cannot be responded to in full, respond to the extent possible, specifying the reason for Your inability to respond to the remainder. If Your responses are qualified in any respect, set forth the terms and an explanation of each such qualification.

6. If You do not possess knowledge of the requested information, You should so State Your lack of knowledge and describe all efforts made by You to obtain the information necessary to answer the Interrogatory.

7. In no event should You leave any response blank. If the answer to an Interrogatory is, for example, "none," "unknown," or "not applicable," such statement should be written as an answer.

8. If, in answering these Interrogatories, You encounter any ambiguity when construing a question, instruction, or definition, Your answer shall set forth the matter deemed ambiguous and the construction used in answering.

9. All objections shall be set forth with specificity and shall include a brief statement of the grounds for such objection.

INTERROGATORIES

INTERROGATORY NO. 18:

Identify each person whom You intend to call as an expert witness at trial, State the subject matter on which he or she is expected to testify, and State the substance of all facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

RESPONSE TO INTERROGATORY NO. 18:

INTERROGATORY NO. 19:

State All Facts that support Your contention that the NCAA acted with actual malice in allegedly defaming You.

RESPONSE TO INTERROGATORY NO. 19:

INTERROGATORY NO. 20:

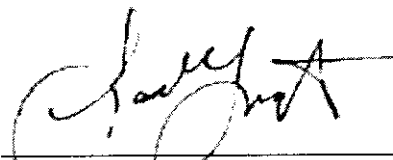
State All Facts that support Your belief that the individuals listed below have the corresponding email addresses and that such individuals received the emails You or Kathryn Kenney sent to those addresses as reflected in documents WMKN_0000004; WMKN_0000015; WMKN_0000090; WMKN_0000037; WMKN_0000041; WMKN_0000019.

- Andy Noel – Jan16@cornell.edu
- Dave Doeren – Natalie_brincefield@ncsu.edu
- David Cutcliffe – dukefootball@duaa.duke.edu

- Rich Rodriguez – mmelendez@arizona.edu
- Skip Holtz – football@latech.edu
- Steve Addazio – bc.football@bc.edu

RESPONSE TO INTERROGATORY NO. 20:

Date: January 27, 2016



Sarah M. Gragert (admitted *Pro Hac Vice*, DC No. 977097)

Brian E. Kowalski (admitted *Pro Hac Vice*, DC No. 500064)

Everett C. Johnson, Jr. (admitted *Pro Hac Vice*, DC No. 358446)

LATHAM & WATKINS LLP
555 Eleventh Street NW
Suite 1000

Washington, DC 20004-1304

Telephone: (202) 637-2200

Email: Brian.Kowalski@lw.com

Everett.Johnson@lw.com

Sarah.Gragert@lw.com

Thomas W. Scott (No. 15681)

KILLIAN & GEPHART, LLP

218 Pine Street

P.O. Box 886

Harrisburg, PA 17108-0886

Telephone: (717) 232-1851

Email: tscott@killiangephart.com

Counsel for the NCAA, Dr. Emmert, and Dr. Ray

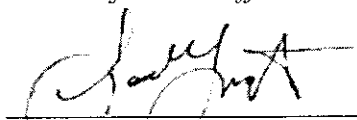
CERTIFICATE OF SERVICE

I, Sarah M. Gragert, hereby certify that, on this 27th day of January, 2016, I am serving the foregoing *Third Set of Interrogatories by the National Collegiate Athletic Association to Plaintiff William Kenney* by First Class Mail and email on the following:

Thomas J. Weber, Esquire
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P.O. Box 6991
Harrisburg, PA 17112
Telephone: (717) 234-4161
Email: tjw@goldbergkatzman.com

Wick Sollers, Esquire
L. Joseph Loveland, Esquire
Mark A. Jensen, Esquire
Patricia L. Maher, Esquire
Ashley C. Parrish, Esquire
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500
Email: wsollers@kslaw.com
jloveland@kslaw.com
mjensen@kslaw.com
pmaher@kslaw.com
aparrish@kslaw.com

Counsel for Plaintiffs



Sarah M. Gragert (admitted *Pro Hac Vice*, DC No. 977097)

LATHAM & WATKINS LLP
555 Eleventh Street NW
Suite 1000
Washington, DC 20004-1304
Telephone: (202) 637-2200
Email: Sarah.Gragert@lw.com

Counsel for the NCAA, Dr. Emmert, and Dr. Ray

Exhibit 11

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

ESTATE of JOSEPH PATERNO, et al.,)	
)	
Plaintiffs,	)	Civil Division
)	
v.)	
)	
NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, et al.,	)	Docket No. 2013-
	)	2082
Defendants.)	
)	

**THIRD SET OF INTERROGATORIES BY THE NATIONAL COLLEGIATE
ATHLETIC ASSOCIATION TO PLAINTIFF JAY PATERNO**

The National Collegiate Athletic Association (the "NCAA"), by and through its counsel, hereby propounds, pursuant to Pennsylvania Rule of Civil Procedure No. 4005, the following Interrogatories to Plaintiff Jay Paterno, to be answered separately and fully in writing and under oath within thirty (30) days of service, in accordance with the Instructions and Definitions set forth herein.

DEFINITIONS

As used herein, the words and phrases set forth below shall have the broadest meaning or meanings permitted under Pennsylvania Rule of Civil Procedure No. 4003.1. Unless defined, all words used in these Interrogatories are to be given their plain and ordinary meaning.

1. "You" or "Your" shall mean Jay Paterno, and all other persons acting on behalf of Jay Paterno, including but not limited to, attorneys and their associates, investigators, agents, directors, officers, employees, representatives, and others who may have obtained information for or on behalf of Jay Paterno.

2. "All" or "any" shall mean "each and every."

3. “And” and “or” shall mean either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed outside of its scope.

4. “State All Facts” shall mean to state in a complete and straightforward manner those relevant facts known to You or that You can ascertain through a reasonably diligent search, which support Your contention.

5. The term “Identify” shall mean:

i. when applicable to a natural person, to state at a minimum his or her full name, last known address and telephone number, and business affiliation(s) and position(s);

ii. when applicable to any entity other than a natural person, to state at a minimum the entity’s full name and the full address of its main office;

iii. when applicable to any payment, fees or services provided, to state and list with particularity the amount and additional information for each.

INSTRUCTIONS

The following instructions are applicable throughout these Interrogatories and are incorporated into each specific Interrogatory:

1. Each Interrogatory should be responded to upon Your entire knowledge from all sources and all information in Your possession or otherwise available to You, including information from employees, agents, representatives, consultants, or attorneys, and information which is known to each of them.
2. Each Interrogatory should be construed independently and not with reference to any other Interrogatory for purposes of limitation.
3. These Interrogatories shall be deemed to be continuing so as to require prompt supplemental responses should Your answers change.
4. If a Document is provided in response to an Interrogatory, identify which Document(s) is (are) being provided to answer that Interrogatory; if You are asked to identify Documents, include Bates numbers.
5. If any of the Interrogatories cannot be responded to in full, respond to the extent possible, specifying the reason for Your inability to respond to the remainder. If Your responses are qualified in any respect, set forth the terms and an explanation of each such qualification.
6. If You do not possess knowledge of the requested information, You should so State Your lack of knowledge and describe all efforts made by You to obtain the information necessary to answer the Interrogatory.
7. In no event should You leave any response blank. If the answer to an Interrogatory is, for example, "none," "unknown," or "not applicable," such statement should be written as an answer.

8. If, in answering these Interrogatories, You encounter any ambiguity when construing a question, instruction, or definition, Your answer shall set forth the matter deemed ambiguous and the construction used in answering.

9. All objections shall be set forth with specificity and shall include a brief statement of the grounds for such objection.

INTERROGATORIES

INTERROGATORY NO. 17:

Identify each person whom You intend to call as an expert witness at trial, State the subject matter on which he or she is expected to testify, and State the substance of all facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

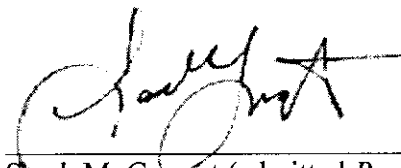
RESPONSE TO INTERROGATORY NO. 17:

INTERROGATORY NO. 18:

State All Facts that support Your contention that the NCAA acted with actual malice in allegedly defaming You.

RESPONSE TO INTERROGATORY NO. 18:

Date: January 27, 2016



Sarah M. Gragert (admitted *Pro Hac Vice*, DC
No. 977097)

Brian E. Kowalski (admitted *Pro Hac Vice*, DC
No. 500064)

Everett C. Johnson, Jr. (admitted *Pro Hac Vice*,
DC No. 358446)

LATHAM & WATKINS LLP
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Washington, DC 20004-1304

Telephone: (202) 637-2200

Email: Brian.Kowalski@lw.com

Everett.Johnson@lw.com

Sarah.Gragert@lw.com

Thomas W. Scott (No. 15681)
KILLIAN & GEPHART, LLP
218 Pine Street
P.O. Box 886
Harrisburg, PA 17108-0886
Telephone: (717) 232-1851
Email: tscott@killiangephart.com

Counsel for the NCAA, Dr. Emmert, and Dr. Ray

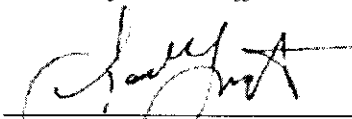
CERTIFICATE OF SERVICE

I, Sarah M. Gragert, hereby certify that, on this 27th day of January, 2016, I am serving the foregoing *Third Set of Interrogatories by the National Collegiate Athletic Association to Plaintiff Jay Paterno* by First Class Mail and email on the following:

Thomas J. Weber, Esquire
GOLDBERG KATZMAN, P.C.
4250 Crums Mill Road, Suite 301
P.O. Box 6991
Harrisburg, PA 17112
Telephone: (717) 234-4161
Email: tjw@goldbergkatzman.com

Wick Sollers, Esquire
L. Joseph Loveland, Esquire
Mark A. Jensen, Esquire
Patricia L. Maher, Esquire
Ashley C. Parrish, Esquire
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 737-0500
Email: wsollers@kslaw.com
jloveland@kslaw.com
mjensen@kslaw.com
pmaher@kslaw.com
aparrish@kslaw.com

Counsel for Plaintiffs



Sarah M. Gragert (admitted *Pro Hac Vice*, DC No. 977097)

LATHAM & WATKINS LLP
555 Eleventh Street NW
Suite 1000
Washington, DC 20004-1304
Telephone: (202) 637-2200
Email: Sarah.Gragert@lw.com

Counsel for the NCAA, Dr. Emmert, and Dr. Ray

Exhibit 12

IN THE COURT OF COMMON PLEAS OF CENTRE COUNTY, PENNSYLVANIA

GEORGE SCOTT PATERNO, as duly appointed representative of)
the ESTATE and FAMILY of JOSEPH PATERNO;)

RYAN MCCOMBIE, ANTHONY LUBRANO,)
AL CLEMENS, PETER KHOURY, and)
ADAM TALIAFERRO, members of the)
Board of Trustees of Pennsylvania State University;)

PETER BORDI, TERRY ENGELDER,)
SPENCER NILES, and JOHN O'DONNELL,)
members of the faculty of Pennsylvania State University;)

WILLIAM KENNEY and JOSEPH V. ("JAY") PATERNO,)
former football coaches at Pennsylvania State University; and)

ANTHONY ADAMS, GERALD CADOGAN,)
SHAMAR FINNEY, JUSTIN KURPEIKIS,)
RICHARD GARDNER, JOSH GAINES, PATRICK MAUTI,)
ANWAR PHILLIPS, and MICHAEL ROBINSON, former)
football players of Pennsylvania State University,)

Plaintiffs,)

v.)

NATIONAL COLLEGIATE ATHLETIC ASSOCIATION)
("NCAA"), MARK EMMERT, individually and as President of)
the NCAA, and EDWARD RAY, individually and as former)
Chairman of the Executive Committee of the NCAA,)

Defendants.)

Civil Division

Docket No. 2013-
2082

**DEFENDANT NATIONAL COLLEGIATE ATHLETIC ASSOCIATION'S RESPONSE
TO FIRST SET OF INTERROGATORIES BY PLAINTIFF GEORGE SCOTT
PATERNO AS DULY APPOINTED REPRESENTATIVE TO THE
ESTATE AND FAMILY OF JOSEPH PATERNO**

Pursuant to Pennsylvania Rule of Civil Procedure Number 4006, Defendant National Collegiate Athletic Association ("NCAA"), by and through its undersigned counsel, hereby submits its responses and objections to the First Set of Interrogatories, issued by Plaintiff George

Scott Paterno, as duly appointed representative of the Estate and Family of Joseph Paterno ("Paterno"), dated January 17, 2014 (the "Interrogatories").

GENERAL OBJECTIONS AND RESPONSES

The following General Objections and Responses are hereby incorporated by reference with the same force and effect as if fully set forth in the specific response to each Interrogatory below.

1. Defendant objects to the Interrogatories on the grounds that they are premature, improper, and needlessly burdensome, as Plaintiff filed an amended complaint on February 5, 2014, and Defendant intends to file preliminary objections thereto. In particular, Defendant objects to the Interrogatories to the extent they seek information related solely to claims that were dismissed from the action in the Court's January 7, 2014 Order.

2. Defendant objects to the Interrogatories to the extent they seek "every," "all," or "any" documents or information relating to a particular topic or topics when less than "every," "all," or "any" documents or information are either necessary or material to the prosecution or defense of this action and/or provision of "every," "all," or "any" documents or information would duplicate other document requests. In responding to the Interrogatories, Defendant states that it will conduct a diligent search, reasonable in scope, of those files in its possession, custody, or control that it believes to be the most likely to contain documents or information responsive to the Interrogatories. Defendant has not, however, undertaken to search or review each and every file and record in its possession, custody, or control, because to do so would be unduly burdensome and expensive. To the extent the Interrogatories purport to require Defendant to do more than the following or seek information beyond what is available after a reasonable search of Defendant's files likely to contain relevant or responsive documents or information,

Defendant objects. In the event that further information, documents, records, or files responsive to any of the Requests are identified or brought to Defendant, Defendant reserves the right to amend or supplement its responses.

3. Defendant objects to the Interrogatories, including the Instructions and Definitions, to the extent that they are vague, ambiguous, and do not specify the information sought with sufficient particularity, thereby requiring speculation to determine their meaning. The specific responses set forth below are based on Defendant's interpretation of the language used in the Interrogatories. Defendant reserves the right to amend or supplement its responses in the event Plaintiff asserts an interpretation that differs from Defendant's interpretation.

4. Defendant does not concede the existence of potentially responsive documents or information or that any such documents or information are in the possession, custody or control of Defendant by virtue of any response or objection to an Interrogatory.

5. Defendant generally responds that no incidental or implied admissions are intended by these responses and no such implications should be made. Except as may be expressly stated, nothing stated in these responses is an admission as to a fact or document referred to or assumed in any Interrogatory nor an admission that anything stated in these responses is admissible in evidence, nor a waiver of any objection.

6. Defendant objects to the Interrogatories, including the Instructions and Definitions, to the extent that they seek to impose requirements or obligations on Defendant in addition to, beyond the scope of, or different from those imposed by the Pennsylvania Rules of Civil Procedure or any other applicable laws or rules.

7. Defendant objects to the Interrogatories, including the Instructions and Definitions, to the extent the discovery sought is unreasonably cumulative or duplicative.

8. Defendant objects to the Interrogatories, including the Instructions and Definitions, to the extent they seek documents or information not relevant to the claims or defenses of any party in the pending action and/or not reasonably calculated to lead to the discovery of admissible evidence.

9. Defendant objects to the Interrogatories, including the Instructions and Definitions, to the extent that they seek discovery of information that is publicly available and, therefore, of no greater burden to Plaintiff to obtain as the burden imposed upon Defendant.

10. Defendant objects to the Interrogatories, including the Instructions and Definitions, to the extent the discovery sought is obtainable from some other source that is more convenient, less burdensome, or less expensive, including from Plaintiff's own records or witnesses or through other methods and/or sources.

11. Defendant objects to the Interrogatories, including the Instructions and Definitions, to the extent they seek information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege. To the extent any such information is or may be disclosed in response to the Interrogatories, the disclosure of any such information is inadvertent and is not to be deemed a waiver of the privilege in question (or any other applicable privilege) with respect to the disclosed information or any other information. Defendant reserves the right to redact any material covered by this Objection.

12. Defendant objects to the Interrogatories, including the Instructions and Definitions, to the extent that they seek discovery of confidential and/or proprietary business information, including trade secrets or other confidential research, development, or commercial information. Any responses Defendant provides to these Interrogatories are subject to the entry of a mutually-agreeable protective order. Defendant reserves all of its rights and applicable

objections with respect to its private, confidential, proprietary, or other similarly protected confidential materials and information.

13. Defendant objects to the Interrogatories, including the Instructions and Definitions, to the extent that they seek documents or information for which Defendant owes a third party an obligation of confidentiality, whether contractual or otherwise.

14. These objections are made without in any way waiving, but, on the contrary, reserving: (i) all questions as to competency, relevance, materiality, privilege, and admissibility as evidence for any purpose of any of the information produced hereunder or the subject matter thereof; (ii) the right to object on any ground to the use of the information produced hereunder or the subject matter thereof at any trial or hearing in this matter or in any related or subsequent action or proceeding; (iii) the right to object on any ground to a demand for further response or document production; and (iv) the right at any time to revise, supplement, correct, or add to these objections and responses.

SPECIFIC OBJECTIONS AND RESPONSES TO THE INSTRUCTIONS

1. Defendant objects to Instruction No. 1 on the grounds that it is overly broad and unduly burdensome, and to the extent it requires Defendant to provide responses based on documents and information not within Defendant's possession, custody, or control.

SPECIFIC OBJECTIONS AND RESPONSES TO THE DEFINITIONS

1. Defendant objects to the definitions of "you," "your," "yours," "Defendant," "NCAA," and "Penn State" in Definition Nos. 1 and 6 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports to define these terms to include "any other person acting, authorized to act, or purporting to act on behalf of" the defined person or entity.

2. Defendant objects to the definition of “communication” in Definition No. 3 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports to define this term to include “the transmittal of information by any means,” and to the extent it seeks the production of “any . . . oral conversation.”

3. Defendant objects to the definition of “identify” in Definition No. 4 as overly broad and unduly burdensome. Defendant will identify a person by providing said person’s first and last name and the institution with which the person is affiliated, if known.

4. Defendant objects to the definition of “person,” in Definition No. 5 as vague, ambiguous, overly broad, and unduly burdensome to the extent that Plaintiff purports to define this term to include “all of the person’s representatives.”

5. Defendant objects to the definition of the “NCAA investigation” in Definition No. 7 as vague, ambiguous, overly broad and unduly burdensome. The NCAA did not conduct its own investigation of the matters related to Sandusky and Penn State. Those matters were investigated and evaluated by the law firm of Freeh, Sporkin & Sullivan, LLP, at the direction of Penn State University. Defendant further objects to this definition to the extent that it implies that NCAA asserted jurisdiction it did not otherwise have and to the extent that it implies that Dr. Emmert took action independently from NCAA with respect to matters related to Sandusky and Penn State in November 2011.

6. Defendant objects to the definition of the “NCAA enforcement process” in Definition No. 9 as vague and ambiguous, including in its use of the phrase “required to comply.” Defendants further object to this definition to the extent it purports to characterize NCAA’s Operating Bylaws and Administrative Bylaws inconsistently with the text of the Operating Bylaws and Administrative Bylaws and NCAA practices.

7. Defendant objects to the definition of “NCAA appeals process” in Definition No. 10 as vague and ambiguous, including in its use of the phrase “required to comply.” Defendants further object to this definition to the extent it purports to characterize NCAA’s Operating Bylaws and Administrative Bylaws inconsistently with the text of the Operating Bylaws and Administrative Bylaws and NCAA practices.

SPECIFIC OBJECTIONS AND RESPONSES TO THE DOCUMENT REQUESTS

Interrogatory No. 1:

Please identify the members of the NCAA Committee on Infractions during 2011 and 2012, and the terms of their membership on the Committee on Infractions.

Response to Interrogatory No. 1:

Defendant objects to Interrogatory No. 1 as vague and ambiguous in its use of the phrases “NCAA Committee on Infractions” and “terms of their membership.” The individuals listed below served on the Division I Committee on Infractions during the time period stated.

<u>Name</u>	<u>Institution</u>	<u>Dates of Service</u>
Gregory Sankey	Southeastern Conference	September 1, 2010 – September 1, 2016 (anticipated)
Greg Christopher	Bowling Green State University	September 1, 2012 – September 1, 2015 (anticipated)
Rodney J. Uphoff	University of Missouri, Columbia	May 4, 2009 – September 1, 2015 (anticipated)
Roscoe Howard	Andrews Kurth LLP	November 2, 2009 – September 1, 2015 (anticipated)
James O’Fallon	University of Oregon	May 4, 2009 – September 1, 2015 (anticipated)
Christopher Griffin	Foley & Lardner LLP	September 1, 2011 – September 1, 2014 (anticipated)
Britton Banowsky	Conference USA	September 1, 2008 – September 1, 2014 (anticipated)

John Black	Polsinelli LLP	September 1, 2008 – September 1, 2014 (anticipated)
Eleanor W. Myers	Temple University	September 1, 2009 – July 1, 2013
Melissa L. Conboy	University of Notre Dame	September 1, 2008 – July 1, 2013
Dennis E. Thomas	Mid-Eastern Atlantic Conference	September 1, 2006 – September 1, 2012

Interrogatory No. 2:

Please identify every person that was an NCAA liaison to the Committee on Infractions, and any other person designated by the NCAA to work with the Committee on Infractions during 2011 and 2012.

Response to Interrogatory No. 2:

Defendant objects to Interrogatory No. 2 as vague and ambiguous in its use of the phrases “liaison,” “designated by the NCAA to work with,” and “NCAA Committee on Infractions.” The following individuals served as liaisons to the Division I Committee on Infractions during this time period: Shepard C. Cooper (director/liaison) and James Elworth (assistant director/liaison). The following individuals also worked with the Division I Committee on Infractions during this time period: Cheryl DeWees (assistant coordinator), Karen Martin (assistant coordinator), Joel McGormley (managing director, beginning in June 2012), Terri Carmichael Jackson (associate director beginning in August 2012).

Interrogatory No. 3:

Please identify every person that was a member of the NCAA Infractions Appeals Committee during 2011 and 2012, and the terms of their membership on the Infractions Appeals Committee.

Response to Interrogatory No. 3:

Defendant objects to Interrogatory No. 3 as vague and ambiguous in its use of the phrases “NCAA Infractions Appeals Committee” and “terms of their membership.” The individuals

listed below served on the Division I Infractions Appeals Committee during the time period stated.

<u>Name</u>	<u>Institution</u>	<u>Dates of Service</u>
Patricia C. Ohlendorf	University of Texas at Austin	January 26, 2010 – September 1, 2015 (anticipated)
Susan Lipnickey	Miami University (Ohio)	September 1, 2006 – September 1, 2015 (anticipated)
W. Anthony Jenkins	Dickinson Wright PLLC	September 1, 2011 – September 1, 2014 (anticipated)
Jack H. Friedenthal	George Washington University	September 1, 2008 – September 1, 2014 (anticipated)
David Williams II	Vanderbilt University	August 27, 2007 – September 1, 2014 (anticipated)
Christopher Griffin (public member)	Foley & Lardner LLP	September 1, 2002 – September 1, 2011

Interrogatory No. 4:

Please identify every person that was an NCAA liaison to the Infractions Appeals Committee, and any other person designated by the NCAA to work with the Infractions Appeals Committee during 2011 and 2012.

Response to Interrogatory No. 4:

Defendant objects to Interrogatory No. 4 as vague and ambiguous in its use of the phrases “liaison,” “designated by the NCAA to work with,” and “NCAA Infractions Appeals Committee.” The following individuals served as liaisons to the Division I Infractions Appeals Committee during this time period: Wendy Walters, Alex Smith, and Laman Dantzler. The following individuals also worked with the Division I Infractions Appeals Committee during this time period: Kelley Sullivan (administrative support) and John Bowen (court reporter).

Interrogatory No. 5:

Please identify every person that was a member of the NCAA Executive Committee during 2011 and 2012, and the terms of their membership on the Executive Committee.

Response to Interrogatory No. 5:

Defendant objects to Interrogatory No. 5 as vague and ambiguous in its use of the phrase "terms of their membership." The individuals listed below served on the Executive Committee during the time period stated.

<u>Name</u>	<u>Institution</u>	<u>Dates of Service</u>
Kirk Schulz	Kansas State University	December 5, 2012 – August 31, 2016 (anticipated)
Rita Hartung Cheng	Southern Illinois University at Carbondale	October 31, 2012 – August 31, 2016 (anticipated)
Gene D. Block	University of California, Los Angeles	August 10, 2012 – August 31, 2016 (anticipated)
David R. Hopkins	Wright State University	May 2, 2012 – August 31, 2015 (anticipated)
Harris Pastides	University of South Carolina, Columbia	May 23, 2011 – August 31, 2015 (anticipated)
Thomas Haas	Grand Valley State University	January 1, 2012 – January 1, 2015 (anticipated)
Nathan O. Hatch	Wake Forest University	August 9, 2010 – August 31, 2014 (anticipated)
Lou Anna Simon	Michigan State University	May 24, 2010 – August 31, 2014 (anticipated)
Noreen Morris	Northeast Conference	January 4, 2010 – April 30, 2014 (anticipated)
Jack R. Ohle	Gustavus Adolphus College	January 1, 2012 – January 1, 2014
J. Patrick O'Brien	West Texas A&M University	September 1, 2010 – January 1, 2014
William A. Meehan	Jacksonville State University	April 30, 2011 – August 31, 2013
William R. Harvey	Hampton University	October 22, 2009 – August 31, 2013

Judy Genshaft	University of South Florida	August 11, 2009 – August 31, 2013
John G. Peters	Northern Illinois University	September 26, 2008 – July 1, 2013
Stan L. Albrecht	Utah State University	May 2, 2012 – May 5, 2013
Jeffrey Martinez	University of Redlands	January 1, 2012 – January 1, 2013
James Schmotter	Western Connecticut State University	January 1, 2011 – January 1, 2013
Sidney McPhee	Middle Tennessee State University	August 9, 2010 – December 5, 2012
Timothy P. White	University of California, Riverside	May 2, 2012 – October 31, 2012
E. William Beauchamp, C.S.C.	University of Portland	April 30, 2011 – August 8, 2012
David Schmidly	University of New Mexico	April 30, 2010 – August 8, 2012
F. Ann Millner	Weber State University	April 30, 2009 – August 8, 2012
Edward Ray	Oregon State University	April 30, 2007 – August 8, 2012
Guy H. Bailey	Texas Tech University	May 2, 2012 – July 23, 2012
Michael F. Alden	University of Missouri, Columbia	September 1, 2010 – July 23, 2012
Chris Martin	College Conference of Illinois & Wisconsin	January 1, 2011 – January 1, 2012
Richard Cole, Jr.	Dowling College	January 1, 2011 – January 1, 2012
Drew Bogner	Molloy College	January 1, 2010 – January 1, 2012
James E. Bultman	Hope College	January 1, 2010 – January 1, 2012

Interrogatory No. 6:

Please identify every person that was an NCAA liaison to the Executive Committee, and any other person designated by the NCAA to work with the Executive Committee during 2011 and 2012.

Response to Interrogatory No. 6:

Defendant objects to Interrogatory No. 6 as vague and ambiguous in its use of the phrases “liaison” and “designated by the NCAA to work with.” The following individuals served as

liaisons to the Executive Committee during this time period: Bernard Franklin and Delise O'Meally. The following individuals also worked with the Executive Committee during this time period: Jim Isch and Janice Whitehead (assistant).

Interrogatory No. 7:

Please identify every person that was a member of the NCAA Board of Directors during 2011 and 2012, and the terms of their membership on the Board of Directors.

Response to Interrogatory No. 7:

Defendant objects to Interrogatory No. 7 as vague and ambiguous in its use of the phrases "NCAA Board of Directors" and "terms of their membership." The individuals listed below served on the Division I Board of Directors during the time period stated.

<u>Name</u>	<u>Institution</u>	<u>Dates of Service</u>
Michael Drake	University of California, Irvine	Dec. 3, 2012 – Aug. 31, 2016 (anticipated)
Kirk Schulz	Kansas State University	July 23, 2012 – August 31, 2016 (anticipated)
David Leebron	Rice University	July 3, 2012 – August 31, 2016 (anticipated)
Patrick T. Harker	University of Delaware	June 13, 2012 – August 31, 2016 (anticipated)
Gene D. Block	University of California, Los Angeles	April 30, 2012 – August 31, 2016 (anticipated)
Rita Hartung Cheng	Southern Illinois University at Carbondale	April 30, 2012 – August 31, 2016 (anticipated)
David R. Hopkins	Wright State University	April 30, 2011 – August 31, 2015 (anticipated)
Harris Pastides	University of South Carolina, Columbia	April 30, 2011 – August 31, 2015 (anticipated)
Lou Anna Simon	Michigan State University	May 24, 2010 – August 31, 2014 (anticipated)

Nathan O. Hatch	Wake Forest University	April 30, 2010 – August 31, 2014 (anticipated)
Judy Genshaft	University of South Florida	May 1, 2009 – August 31, 2013
William A. Meehan	Jacksonville State University	April 30, 2009 – August 31, 2013
William R. Harvey	Hampton University	April 30, 2009 – August 31, 2013
John D. Welty	California State University, Fresno	April 30, 2012 – July 31, 2013
John G. Peters	Northern Illinois University	August 30, 2008 – July 1, 2013
Stan L. Albrecht	Utah State University	July 26, 2010 – April 5, 2013
David J. Skorton	Cornell University	April 30, 2011 – February 12, 2013
Sidney McPhee	Middle Tennessee State University	July 14, 2010 – December 5, 2012
Timothy P. White	University of California, Riverside	April 30, 2011 – October 31, 2012
Guy H. Bailey	Texas Tech University	June 22, 2010 – July 23, 2012
John Broderick	Old Dominion University	April 30, 2012 – June 13, 2012
David Schmidly	University of New Mexico	April 30, 2008 – April 30, 2012
E. William Beauchamp, C.S.C.	University of Portland	April 30, 2008 – April 30, 2012
F. Ann Millner	Weber State University	April 30, 2008 – April 30, 2012
Edward Ray	Oregon State University	April 30, 2007 – April 30, 2012
Steadman Upham	University of Tulsa	April 30, 2010 – April 27, 2012

Interrogatory No. 8:

Please identify every person that was an NCAA liaison to the Board of Directors, and any other person designated by the NCAA to work with the Board of Directors during 2011 and 2012.

Response to Interrogatory No. 8:

Defendant objects to Interrogatory No. 8 as vague and ambiguous in its use of the phrases “liaison,” “designated by the NCAA to work with,” and “Board of Directors.” The following individuals served as liaisons to the Division I Board of Directors during this time period: David

Berst and Jackie Campbell. The following individual also worked with the Division I Board of Directors during this time period: Donald Remy and Mark Emmert.

Interrogatory No. 9:

Please identify every person that worked on the NCAA investigation on behalf of the NCAA, including but not limited to members of the NCAA enforcement staff.

Response to Interrogatory No. 9:

Defendant objects to Interrogatory No. 9 as vague and ambiguous in its use of the phrases “worked on” and “on behalf of the NCAA.” Defendant further objects to Interrogatory No. 9 as vague and ambiguous, overly broad and unduly burdensome in its use of the term “NCAA investigation.” The NCAA did not conduct its own investigation of the matters related to Sandusky and Penn State. Those matters were investigated and evaluated by the law firm of Freeh, Sporkin & Sullivan, LLP, at the direction of Penn State University. The following persons were involved in discussions concerning the NCAA’s response to the matters related to Sandusky and Penn State: some or all of the then-current members of the NCAA Executive Committee identified in response to Interrogatory No. 5, David Berst, Mark Emmert, Bernard Franklin, Jim Isch, Kevin Lennon, Mark Lewis, Donald Remy, Wally Renfro, Julie Roe, and Bob Williams.

Dated: February 18, 2014

Everett Johnson ^{18E}

Everett C. Johnson, Jr. (admitted *Pro Hac Vice*, DC
No. 358446)

Lori Alvino McGill (admitted *Pro Hac Vice*, DC
No. 976496)

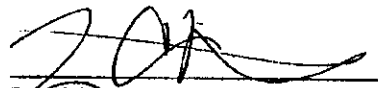
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Counsel for Defendants

VERIFICATION

I hereby verify that the statements of fact made in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that any false statements therein are subject to the penalties contained in 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read 'Zandria C. Conyers', is written over a horizontal line.

Zandria C. Conyers
Director of Legal Affairs and
Associate General Counsel

CERTIFICATE OF SERVICE

I, Brian E. Kowalski, hereby certify that I am serving the foregoing Response to First Requests for Production of Documents by Plaintiff George Scott Paterno as Duly Appointed Representative of the Estate and Family of Joseph Paterno to Defendant NCAA on the following by First Class Mail and email:

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Dated: February 18, 2014



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Attorney for Defendants

Exhibit 13

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7/23/12 Q&A: Ed Ray discusses PSU sanctions

7:30 PM ET

By Adam Rittenberg | ESPN.com

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INDIANAPOLIS -- NCAA president Mark Emmert received most of the attention Monday in announcing the unprecedented penalties for Penn State's football program, but Oregon State president Ed Ray also played a significant role. Ray chairs the NCAA's executive committee and represented the presidents and chancellors Monday. He helped give Emmert the green light to punish Penn State outside of the normal infractions process. He also didn't mince words about what he called "a conspiracy of silence at the highest levels" of Penn State regarding the Jerry Sandusky sex abuse scandal.

I caught up with Ray on Monday afternoon following his return to Oregon. He explained several elements of Monday's decision and also disagreed with the claim made by Penn State president Rodney Erickson that Penn State had to accept the NCAA's penalties or face the so-called "death penalty," a suspension of its football program.

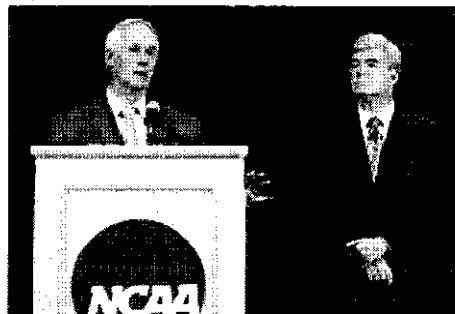
Here's my conversation with Ray:

Earlier today, you mentioned a retreat several presidents and chancellors took last year where they decided they had had enough with corruption. How did that play into Monday's decision and the need to reclaim control?

Ed Ray: The retreat last year was a pretty amazing experience. There was a recognition that we needed to change the risk-reward calculation that people are doing. We talked about a lot of things. The whole reform effort is touching on many categories. Some of them are enforcement, policies, procedures, penalties, guidelines for penalties. I chair the work on that. We'll get a penultimate draft of that document out at the meetings on Aug. 2. So I think there has been a lot of attention focused on the need to make certain that the actions that are taken, whether they're through the enforcement process or outside by the executive committee, that the messages sent need to be very clear.

Having said that, it would be unfair to say people didn't have what we understood was unfolding at Penn State in front of mind. But when all is said and done, this is about this case. This isn't about people being mad or happy or wanting to send broad messages to the world. This is about the Penn State case, period. And given the circumstances of the Penn State case, given the agreement of the basic facts as we know them from the Freeh report, both the university and the NCAA executive committee, we found a basis for asserting what we would want Penn State to agree to in a consent decree, which was presented to them and they accepted it.

[+] Enlarge



Oregon State University president Ed Ray (at podium) and NCAA president Mark Emmert made history Monday.

BIG TEN SCOREBOARD

Saturday, 11/1

12:00 PM ET Northwestern Iowa	BTN Tickets Conversation
12:00 PM ET Maryland Penn State	ESPN2 WatchESPN Tickets Conversation
12:00 PM ET Wisconsin Rutgers	ESPN WatchESPN Tickets Conversation
3:30 PM ET Purdue 15 Nebraska	ABC ESPN2 Tickets Conversation
3:30 PM ET Indiana Michigan	BTN Tickets Conversation
8:00 PM ET Illinois 16 Ohio State	ABC WatchESPN Preview Tickets

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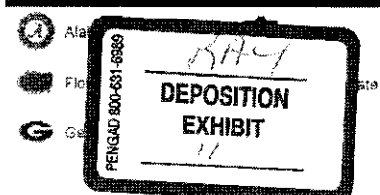
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 Austin Ward ESPN Archive	

Have a question? Ask it in the Big Ten mailbox.

Tweets from <https://twitter.com/ESPNCFB/lists/b1g>

CFBNATION



Was there any apprehension among you or your fellow presidents in going this route as opposed to the NCAA's normal enforcement and infractions process?

Ray: Everybody felt these are truly extraordinary circumstances in the sense that this isn't about team violations or a coach doing something with respect to competition on the field or recruiting. This was an institution-wide lack of institutional control, a loss of integrity in the way the university was operating. It really called for consideration of extraordinary measures. The heinous nature of it, if anything, simply added to the sense that there is a common understanding of what needs to be done in a punitive way and in a corrective way, and that it needs to be pursued. It really was the nature of what went on there. It reflected a complete lack of institutional integrity and institutional commitment to the core values of the NCAA. It led us to conclude it was within the authority of the executive committee to take and exercise its authority. And that's what we did. There have been other cases where we did not go through the normal enforcement process, given the nature of the case at hand.

What were the discussions like regarding penalties for Penn State?

Ray: It was pretty straightforward. Once we had the Freeh report, the university commissioned it and released it without comment, so we had a pretty clear sense that the university itself accepted the findings. Then the question was: Are there appropriate punitive actions and corrective actions that could be taken? So the executive committee and the Division I board charged President Emmert to discuss possibilities with his staff, with others, whoever he felt would be appropriate. He called some of us individually to talk about what set actions would be most appropriate, given the facts as we understand them, that we could present to the university for a consent decree -- for them to either accept or determine they wanted to go in a different direction.

The only potential penalty that we had some extended discussion around was suspension of play, whether that ought to be part of a basket of punitive and corrective measures. There were people who felt that was appropriate, but the overwhelming position of members of both the executive committee and the Division I board was to not include suspension of play. And therefore we moved quickly to a consideration of the actions you heard about today. And that had unanimous support from both groups.

President Erickson was quoted today as saying that Penn State accepted that deal because if not, you would have decided to suspend play. Can you confirm that?

Ray: I've known Rod for a long time. I didn't hear what he said. I was on a plane flying back to Oregon. But I can tell you categorically, there was never a threat made to anyone about suspension of play if the consent decree was not agreed to.

So it wasn't as though you said, "Take this deal or we're shutting you down"?

Ray: That was never even a point of discussion within either the executive committee or the Division I board.

I'm sure you also had familiarity with Graham Spanier. What are your thoughts about his involvement in this, somebody who had such a big role on NCAA committees and had a lot of respect in both Big Ten and NCAA circles?

Ray: I think [Emmert] said it right in that we don't have all the facts about individual culpability. The Freeh report talked about the participants and the cover-up and the conspiracy. But as Mark said, we're going to take a wait-and-see attitude with respect to taking further actions with respect to individuals, as the legal and other processes play their way out, and we get hopefully a clearer sense of what, if any, culpability individuals have. So we did not take action with respect to individuals. We took action with respect to a university that lacked institutional commitment to integrity and the other values of the NCAA.

You've said this is all about Penn State's case, but how do you think other schools will receive the action you took today against Penn State?

Ray: Let me tell you what I would hope that they take away. What I would hope is this is a cautionary tale. For one thing, we certainly acted expeditiously and have dealt with very heinous offenses against human decency, much less [NCAA] values. This was so egregious, and it's hard to fathom anything like it. So what I wouldn't want somebody to do is decide, "This is so unique. It doesn't apply to me." Every major college and university in Division I certainly, if not elsewhere, ought to do a gut check and ask: Do we have the balance right between the culture of athletics and the broader culture and values of our institution? How do we know that? And if we don't, what do we need to do to make sure we get that balance right?

Was there any discussion for a television ban or a reduction in home games for Penn



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State?

Ray: What we talked about were two sets of options. One is the set of actions that you learned about today. That got unanimous consent. We also talked about suspension of play plus some or all of the other actions, but maybe to a lesser degree to get the balance right. In the end, there was overwhelming support for the actions reported today.

Where does Penn State go from here?

Ray: Well, hopefully they go in the right direction and work very hard at creating a culture of commitment to the values of the association, from top to bottom. I hope they work with the integrity officer and they meet the requirements of their probationary period. It is a wonderful, wonderful university, and I expect it will move to a better place. That was really the point of the corrective measures that were taken, to help a very fine university get its bearings straight again.

Many feel SMU's program has never really recovered from what happened. With these types of penalties, do you think Penn State is in a similar situation?



Ray: We tried to find a balance so that taking these actions would not preclude Penn State from being in the future among the leaders in intercollegiate athletics. But let's be clear: These actions were taken because of a conspiracy of silence that went on for years, with total disregard for the well-being of young children. That is what we were trying to send a message about, both in terms of the punitive elements and also with the corrective elements. Those are intended to give people a path to move forward productively.

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Adam Rittenberg | email
College Football

 Follow  Archive

- ESPN.com Big Ten reporter.
- Joined ESPN.com in 2008.
- Graduate of Northwestern University.

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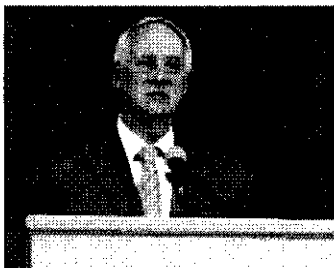
Odds

Ed Ray: 'I started at this from the scorched earth approach'

Updated

Comment

Nearly a year ago, Oregon State President Ed Ray was part of a group of university and college athletics leaders who gathered in Indianapolis at the behest of NCAA President Mark Emmert to begin a comprehensive review of college sports and the NCAA's place in it. A week ago today Ray again was in Indianapolis in his role as chair of the NCAA executive committee and shared the podium with Emmert as he announced unprecedented sanctions against Penn State and its football program.



By Brian Spurlock, U.S. Presswire

NCAA executive committee chair Ed Ray, also Oregon State's president, still wonders why at Penn State "nobody made a phone call, for God's sake."

By Brian Spurlock, U.S. Presswire

NCAA executive committee chair Ed Ray, also Oregon State's president, still wonders why at Penn State "nobody made a phone call, for God's sake."

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He sat down recently with USA TODAY Sports' Jeffrey Martin to talk about the Penn State decision:

MORE: Ex-Penn State players say Freeh Report 'flawed'

What has been your sense of the overall reaction to the sanctions?

Suffice to say, I haven't read a lot about this. I have a vague impression, and most is what I've heard from friends who have reached out, sort of said, "We appreciate what you did, we think you got it right." So, I don't have a sense of how negative the negatives are, what pitch they take. Some people think it's none of our business. Some think we should have been tougher. I'll be honest with you. I was so appalled at just the thought of those children and what was being done, and that nobody made a phone call, for God's sake. I really started at this from the scorched earth approach. We talked about various penalties and what made sense. People said, well, suspension of play, death penalty, is too much of a blunt instrument. These players, these coaches and staff, none of

them have been implicated. This is a huge punishment to them if you do the death penalty, and to other teams in the league and to vendors and so forth. If it's about death penalty per se, those things are always true. ... And what was true is there is nothing involving the current players, coaches and staff that would say they were part of it and they deserve the death penalty. That was one argument against the death penalty. The other was that (Penn State President Rodney Erickson) and the board had been amazingly forthcoming this year. Basically, they commissioned the Freeh Report, made it public immediately, didn't try to editorialize or sugarcoat. They accepted it. We reached out to them about providing conditions for a consent decree, if they were interested. They were very interested in cooperating, so a lot of people argued, "If you look at the way they're behaving, we need to cut them a break here. It can't be scorched earth — that's too much. Let's figure out what's appropriate, both punitive and corrective." In fact, I said in the press conference, that if the culture, the way the leadership is behaving now, if that were true 13 years ago, we wouldn't be having this conversation. So,

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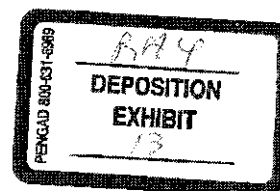
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I'm feeling comfortable on where we are on the package of punitive and corrective actions ... It wasn't Ed Ray deciding. I chaired the meeting, but basically, we collectively, overwhelmingly felt not imposing the death penalty was appropriate and this package ... was as right as we could see ourselves getting it.

...

At what point did you believe it was important that the NCAA executive committee get involved?

After the Freeh Report. Especially given its content and given the university accepted it without exception, said, "We buy it." Then there was the question of, "Don't we need to think about whether we act or not, should we or not?" The sense was that the behavior there emanated from the athletics culture and the football culture. That's what empowered Sandusky to do what he did. I've described it as a "conspiracy of silence." This was all constructed around what? About protecting the athletic brand, not risking losing athletic scholarships or getting sanctions, not having the victories they had or not going to bowl games — yes, it's about athletics. But it wasn't just lack of institutional control of athletics. This was about lack of institutional control of the whole institution, in terms of the core values of the NCAA — working with integrity, having a sense of accountability, shared responsibility for doing things the right way. Mark had sent a letter to Rod back in November and asked him to respond to questions. It ... was about, "Here's our statement of values. What the hell are you doing? How is what you're doing conform to this?" That was the context for the discussion about the athletics environment but also about the whole institution. The executive committee has the authority when it believes something is of a big enough and significant enough nature that it should exercise its ability to expedite the process of reviewing cases. We felt this was an appropriate instance — and they obviously accepted that. They signed the consent decree.

And we have the Freeh Report, which is probably more extensive and exhaustive than any investigation that's ever been done by the NCAA. So the question is, "Are you going to take a year or two to rediscover what has already been published? What are you going to learn that's new that's going to lead you to then take it to the Committee on Infractions and come up with appropriate penalties?"

...

Penn State President Rodney Erickson said his options were to accept the sanctions or a death penalty of four years. Is that correct?

My sense is we're now inventing stories out of word choices. If I were Rod, or if I were advising Rod, I would have said, "We faced a very real risk of the death penalty. It is on the table, and I think this is the right outcome for us because if we got the death penalty, it would be terrible." Because you know what? Before we voted, it was on the table. And it wasn't there as a threat — it was a real risk that we as a group, the executive committee and the Division I board, would have said, "Yes, we want that in the bundle." That's why I've told everyone who's asked ... it wouldn't have been just the death penalty. It would have been the death penalty *plus* presumably all of the corrective actions and some elements of the other punitive actions that would have been a bundle. The first thing we voted on was would it include the death penalty or not, and it wasn't unanimously no. There were people who voted for the death penalty. It was a real risk. If I had to do parsing words, I'd say Rod is absolutely correct. He was looking at a world in which there was a very real risk that they would get the death penalty that wasn't decided until we took our vote. But nobody said, "If you don't do X, we're going to do Y." That conversation never happened.

...

In recalling this case and others Monday, you said, "We've had enough. This has to stop." Were these penalties just about Penn State, or did they reflect the NCAA's growing concern about behavior in big-time college sports? Did Penn State get hit harder because of the sins of previous violators?

We had a press conference after the presidents and chancellors got together in August 2011, and what did we say? We said, 'We've had enough. This has to stop. We are going to make people who behave badly wish to God they didn't behave badly by rewriting what the penalty structure is.' What I was repeating Monday was not that this, in of itself, was a message but what we've been saying for the past year — and I think I referred back ... This fits within the context. But I also said we all ought to do some soul-searching. Every president and chancellor ought to ask, "Do we have the balance right? Is the athletics culture too big relative to the rest of our institutions' culture and values goal? And if so, what are we going to do to fix it before we head down any road that looks anything like this?" All of us in Division I need to ask ourselves, 'How do we get to a better place?' instead of assuming, "Well, Penn State screwed up and that's not us."

Relaxed transfer rules have made it nearly open season on other schools recruiting Penn State players, bringing out the big-money programs and coaches, precisely the kind of activity you have said is a big part of the cultural problem. Is the NCAA sending the message it is hoping to send?

We wanted to do what we could to mitigate that harm. And that meant if they stay there, in football or not, as long as they're academically performing well, or if they want to transfer and go somewhere else, they don't have to sit out for a year and they don't lose a year of eligibility. There was a concern about doing what we could for the individual student-athletes to hold them as harmless as we could. This was a way of trying to do that. Some people may have thought we went too far, some people not far enough. You know? There's nothing you do in this life that doesn't have sometimes unintended consequences. So now everybody is all upset about who is going to steal whom, and so forth and so on. Our focus was on *the* student-athletes and what can we do for them given that they're caught up in this awful nightmare — and it was to try and help them.

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PATERNO,)	Docket No. 2013-2082
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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 208.2(e), the undersigned counsel for movants, Plaintiffs the Estate of Joseph Paterno, William Kenney and Joseph V. ("Jay") Paterno, hereby certifies that on February 19 and 26, good faith conferences were conducted by telephone with counsel for Defendant National Collegiate Athletic Association in an effort to resolve the issues raised in the Motion to Compel Discovery Responses and for an Order to Overruling Objections to Third

Party Discovery without the need for intervention by the Court. Counsel for the parties were unable to resolve the raised in the motion.

February 29, 2016

By: 

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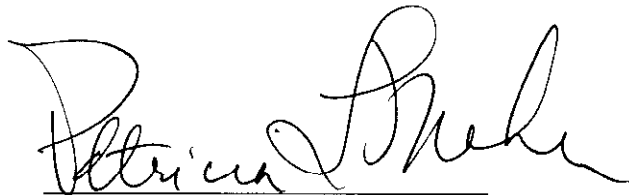
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PLAINTIFFS' MOTION TO COMPEL DISCOVERY RESPONSES AND FOR AN ORDER OVERRULING OBJECTIONS TO THIRD PARTY DISCOVERY was served this 29th day of February, 2016 by first class mail and email to the following:

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