

Lawyering up for the NCAA

Sanctions are so costly that the legal system gets involved.

Karen Sloan

September 6, 2010

The National Collegiate Athletic Association surprised the sports world in June with unusually harsh sanctions against the University of Southern California for improper benefits accepted by Heisman Trophy winner Reggie Bush and basketball player O.J. Mayo, among other violations. The USC football team faces a two-year ban from bowl games, four years of probation, scholarship losses and the vacation of 14 victories, possibly including its 2004-05 national championship. The university has since appealed, asking the NCAA to reduce those sanctions.

The school is hardly the only sports powerhouse under scrutiny, with the University of Michigan, the University of North Carolina, the University of Florida and the University of Connecticut among the Division I schools being investigated. In 2009, the NCAA's enforcement staff processed 29 cases of major infractions — the most serious type of rules violations. The NCAA doesn't disclose investigations, but the large number of high-profile probes that have become public means a steady stream of business for the small complement of attorneys who specialize in NCAA matters.

"The process has gotten lawyered-up significantly over the past 10 years," said Gene Marsh, of counsel to Lightfoot, Franklin & White in Birmingham, Ala., and a member of the NCAA's Committee on Infractions for nine years until 2008. "It used to be that sometimes you would see institutions hire outside counsel, but a lot of times the coach would be in there by himself or herself. There are so many more lawyers involved now, and they are showing up earlier than ever in these investigations."

OUTSIDE THE NCAA PROCESS

Stepping outside the NCAA process and into the legal system to solve disputes has become more commonplace during the past decade. Former University of Washington football coach Rick Neuheisel sued the NCAA in 2003 for improperly investigating him, as did former University of Alabama assistant football coach Ronnie Cottrell in 2005. Former Texas Tech football coach Mike Leach and former Seton Hall basketball coach Bobby Gonzalez are among the coaches who have sued universities this year after being fired.

According to a number of attorneys in the field, ever higher revenues generated by certain sports teams is driving more universities to hire outside counsel in NCAA enforcement matters. Major infractions and harsh sanctions can cost a university a lot of money — sportswriters have estimated that USC could lose millions of dollars as a result of sitting out two bowl games. Universities can also lose prestige and alumni support if their sports teams are crippled by NCAA violations and sanctions.

"Schools more and more are using outside counsel, and I think it's because the stakes are higher and higher with TV coverage and other forms of revenue. They're increasing with no end in sight," said Lightfoot Franklin partner William King, who is in the college sports practice with Marsh. The firm represents the University of Michigan in an ongoing inquiry into the number of coaches and off-seasons workouts it held last season.

"The process has become far more complex over the years, and with that has come more counsel," said Michael Glazier, a partner at Syracuse N.Y.-based Bond, Schoeneck & King who started the country's first collegiate sports practice in 1986 with Mike Slive, now the commissioner of the Southeastern Conference. "Back in the 1980s, schools would use local counsel, who would have to get up to speed on the rules. There was no added expertise."

The field is still relatively small. Bond Schoeneck, Lightfoot Franklin and Indianapolis-based Ice Miller are the only firms with formal NCAA practices. A handful of individual attorneys at law firms have built up NCAA expertise but don't have dedicated practices, while in-house university attorneys sometimes handle cases. The practice typically is not seen as a top money generator because universities have fewer financial resources than corporate clients, and legal bills for public universities are public records often reported by the media.

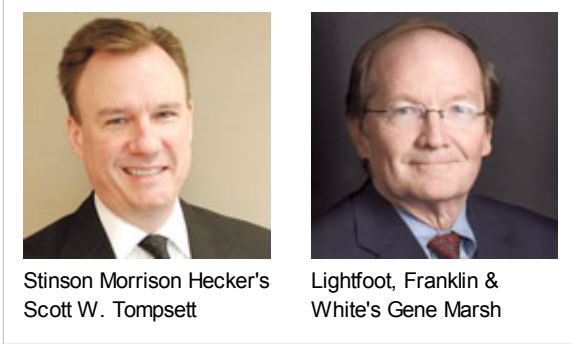
For example, *The Ann Arbor News* reported in June that Lightfoot Franklin had billed nearly \$447,000 to the University of Michigan as of April, while *The Birmingham News* reported in March that Bond Schoeneck billed the University of Alabama more than \$188,000 to represent the athletics department in a recent inquiry involving the distribution of textbooks to student athletes.

Attorneys are involved in nearly every aspect of NCAA inquiries. Many of the NCAA's investigators went to law school, as did many university compliance officers and athletic directors. Three attorneys, three law professors and four athletic administrators with juris doctorates sit on the 10-member Committee on Infractions.

"Much of the work in athletics compliance is understanding, interpreting and providing education about rules and regulations," said Tony Hernandez, senior associate athletics director at the University of Miami and president of the National Association for Athletics Compliance. "The legal training is beneficial to better understand and think through complex issues."



Former USC Trojan player Reggie Bush
Photo: Newscom



Stinson Morrison Hecker's
Scott W. Tompsett

Lightfoot, Franklin &
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The NCAA's infractions system is similar to internal government agency or employment enforcement matters. "It is a very pseudo-legal process akin to administrative law," said Mark Neyland, senior counsel to Ice Miller's collegiate sports practice and a former assistant director of the NCAA's enforcement staff. "The hearings before the committee on infractions look much like hearings you would see in front of other administrative, government agencies."

There are some key differences. The NCAA is a nonprofit organization of member institutions, and investigations and hearings take place behind closed doors. The sanctions process lacks the adversarial foundation of the law: Universities under investigation are members of the NCAA and thus agree to disclose potential problems and cooperate fully.

UNIQUE CONDITIONS TO PRACTICE

"It's a difficult area for a lawyer who doesn't have some background in it," said Ice Miller partner John Thornburgh, whose firm has represented the University of Oklahoma, Indiana University and Arizona State University. "While this is akin to a legal process, the overriding obligation of cooperation and self-disclosure takes some of the litigator adversity out of the equation."

Maintaining separate counsel for coaches and universities is making the infractions process more adversarial, said Michael Buckner, a solo practitioner in Pompano Beach, Fla., who represents universities. "It muddies the waters because the system is not set up to involve the coaches in investigations and hearings," he said. "It's causing a significant change in how cases have been processed, and it will force the NCAA to adjust its procedures and practices."

Among the busiest NCAA lawyers right now is Stinson Morrison Hecker partner Scott Tompsett, who has become go-to counsel for coaches involved in NCAA investigations. He represents coaches in five major infractions cases, including Michigan football coach Rich Rodriguez and former USC assistant coach Todd McNair. McNair has appealed the sanctions imposed against him for failing to report violations involving Bush, whom McNair coached. His appeal alleges misconduct by the NCAA investigators.

"Coaches need their own individual counsel because the institution's counsel is looking after the institution's interest," Tompsett said. "Often the interests of the coaches are not in line with the interests of the institutions."

Tompsett has been handling NCAA cases almost exclusively for the past year. His work has a public relations function. "When you have a client in the spotlight, you have to present them to the public in the best light possible," he said. "When a coach hires me, they are probably facing the most difficult professional crisis they will ever go through. Their jobs and their careers are often on the line."

An NCAA practice can be intense and time-consuming. NCAA investigations generally last between 18 months and two years, although they can stretch much longer — the USC investigation dragged on for four years. Attorneys often have to navigate the tricky world of campus politics and competing interests. The news media and public scrutiny of college sports infractions cases is often far more intense than typical court cases.

"College sports fans are a completely obsessive bunch," said Marsh, who received plenty of hate mail during his tenure, particularly after the committee imposed five years' probation on Baylor University's men's basketball team in 2005. "Their passion often exceeds their grasp of the facts."

Some NCAA attorneys enjoy working with famous coaches, while others prefer to focus squarely on their work. "It's not about going to games," Glazier said. "You've got a client facing serious actions. You probably do a better job for them if you're not a fan. You can't get tied up in who's going to win the game this weekend."

Other attorneys said there are benefits to working in the college sports world.

"The unique nature of this practice is one of the things that makes it interesting to me," said Neyland — certainly more exciting than the Medicare fraud cases he used to handle as a state prosecutor in Tennessee. "Being a sports fan, it's nice to have that inside knowledge and picture of how things operate."

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