



Attorneys at Law

Jackson Lewis LLP
75 Park Plaza
Boston, Massachusetts 02116
Tel 617 367-0025
Fax 617 367-2155
www.jacksonlewis.com

Representing Management Exclusively in Workplace Law and Related Litigation

- ALBANY, NY
ALBUQUERQUE, NM
ATLANTA, GA
AUSTIN, TX
BALTIMORE, MD
BIRMINGHAM, AL
BOSTON, MA
CHICAGO, IL
CINCINNATI, OH
CLEVELAND, OH
DALLAS, TX
DENVER, CO
DETROIT, MI
GREENVILLE, SC
HARTFORD, CT
HOUSTON, TX
INDIANAPOLIS, IN
JACKSONVILLE, FL
LAS VEGAS, NV
LONG ISLAND, NY
LOS ANGELES, CA
MEMPHIS, TN
MIAMI, FL
MILWAUKEE, WI
MINNEAPOLIS, MN
MORRISTOWN, NJ
NEW ORLEANS, LA
NEW YORK, NY
NORFOLK, VA
OMAHA, NE
ORANGE COUNTY, CA
ORLANDO, FL
PHILADELPHIA, PA
PHOENIX, AZ
PITTSBURGH, PA
PORTLAND, OR
PORTSMOUTH, NH
PROVIDENCE, RI
RALEIGH-DURHAM, NC
RICHMOND, VA
SACRAMENTO, CA
SAINT LOUIS, MO
SAN DIEGO, CA
SAN FRANCISCO, CA
SEATTLE, WA
STAMFORD, CT
WASHINGTON, DC REGION
WHITE PLAINS, NY

PAUL V. KELLY, ESQ
DIRECT LINE; (617) 305-1263

August 6, 2012

BY FAX, EMAIL AND FIRST-CLASS MAIL

National Collegiate Athletic Association
Infractions Appeals Committee
Attn. Wendy Walters, Staff Liaison
700 West Washington Street
P.O. Box 6222
Indianapolis, Indiana 46206-6222

Re: Notice of Appeal of Consent Decree imposed upon
The Pennsylvania State University

Dear Ms. Walters:

We represent Ryan J. McCombie, a member of the Board of Trustees of The Pennsylvania State University ("the Board"), and other similarly situated members of the Board, in submitting this notice of intent to appeal the NCAA's consent decree entered against the University. Pursuant to NCAA Bylaws 19.6.3, 32.1.5 and 32.10.1.2, the Appellants are current institutional staff members having significant involvement in this matter and a fiduciary responsibility to insure that the rules, policies and procedures of the University are followed, and the best interests of the University, its students, faculty and alums are preserved and protected. The Board of Trustees is the final repository of all legal responsibility and authority governing the affairs of the University.

The Appellants challenge the NCAA's adoption of findings contained in the Freeh Report, including the determination that the Board "did not perform its oversight duties." The Appellants further challenge each and every one of the sanctions imposed against the University as contained in the consent decree. In short:

- 1. The consent decree is null and void since the President of the University lacked the legal authority to agree to the entry of the consent decree or to waive 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 the consent decree. The Board was not informed or consulted about this matter, nor did it grant approval to the President to take the questioned action, as required by the charter and bylaws of the University, and the standing orders of the Board of Trustees.


2. The NCAA violated the fundamental procedural due process rights of the Appellants, as well as The Pennsylvania State University, by completely failing to follow its own established rules and procedures, by failing to have an investigation conducted by members of the enforcement staff or outside counsel familiar with the NCAA's investigative standards and other important procedural protections, and by relying upon the results of an internal investigation (the Freeh Report) that was never intended as a foundational platform for punitive action by the NCAA.
3. The NCAA decree is fundamentally unfair in that the Freeh Report, on which it is predicated, contains findings and conclusions that are contrary to the evidence presented and/or unsupported by credible evidence. The Report failed to consider evidence or afford certain individuals an opportunity to be heard, failed to acknowledge the absence of important and material evidence in reaching its findings, and reached conclusions based on assumptions, conjecture and misplaced characterizations that are contrary to the available facts and evidence. The facts as found by the Freeh Report also do not constitute violations of NCAA bylaws.
4. The sanctions imposed are excessive and unreasonable. If the primary intended purpose of the sanctions was to attempt to change the culture at The Pennsylvania State University and "realign it in a sustainable fashion with expected norms and values of intercollegiate athletics," these sanctions not only miss the mark, but they inflict permanent damage to an entire generation of student-athletes and coaches who were innocent of any wrongdoing during their time on campus while placing a unwarranted blemish on an institution that, by the NCAA's own acknowledgement, "has never before had NCAA major violations."

On behalf of the Appellants, we request an opportunity to submit our appeal in writing, and further request an in-person oral argument before the Infractions Appeals Committee.

Due process is not a theoretical concept to the named Appellant, Ryan J, McCombie, our client - acting on behalf of himself and other members of the Board. Mr. McCombie is 26-year veteran of the United States Navy and former Navy Seal. He has spent much of his adult life fighting to preserve and protect the fundamental rights of all United States citizens. Mr. McCombie appreciates the efforts of Mr. Freeh to investigate the Sandusky matter, and finds the underlying conduct in question abhorrent. His heart breaks for the victims of this terrible saga, and he and other members of the Board are committed to taking decisive measures to demonstrate respect for the victims and to insure that such reprehensible conduct can never again occur in the future. That said, these objectives should not be achieved by ignoring or trampling upon the fundamental rights of others. The desire for speed and decisiveness cannot justify violating the due process rights of other involved individuals or the University as a whole. That is what has occurred here.

We look forward to receiving acknowledgement of receipt of this notice of appeal.

Very truly yours,

  
Paul V. Kelly

  
Gregg E. Clifton PK