

VILLANOVA

ATHLETICS COMPLIANCE NEWSLETTER

OLIVER WINS SUIT AGAINST THE NCAA

In a landmark decision, an [Ohio judge today ruled in favor of Oklahoma State lefthander Andrew Oliver](#) in his lawsuit against the NCAA. Erie County judge Tyge M. Tone ruled that the NCAA cannot restrict a player's right to have legal representation when negotiating a professional contract and awarded an injunction to restore Oliver's eligibility. The decision invalidated the NCAA's "no agent" and "restitution" rules.

"I'm ecstatic," said Rick Johnson, Oliver's lawyer, on Thursday night. "We wanted three things—to have those two rules thrown out and to have Andy's eligibility restored—and we got all of them . . . To have a complete win—hardly ever do you win everything. To have a complete win is as unusual in law as it is anywhere else. Having a complete win here is not an anomaly—it shows you how one-sided the argument is here. The NCAA is a bully, and they've been beating up on these kids and these schools for years, and

everybody's been taking it. I can't believe people put up with it, I really can't." Oliver was originally ruled ineligible by Oklahoma State (under NCAA pressure) on the eve of OSU's 2008 regional opener for violating the NCAA's "no agent" rule (NCAA Bylaw 12.3.2.1) as a high school senior, when the Twins drafted him in the 17th round and his advisors had contact with the organization on his behalf. Essentially, Oliver was punished for having his advisor/lawyer, Tim Barratta, present during a contract negotiation. But as Tone pointed out in his decision, the NCAA bylaws permit student-athletes to have attorneys, and the NCAA is not authorized to prevent attorneys from providing their clients with competent legal service.

"For a student-athlete to be permitted to have an attorney and then to tell that student athlete that his attorney cannot be present during the discussion of an offer from a professional organization, is akin to hiring a doctor but the doctor is told by the

hospital board and the insurance company that he (the doctor) cannot be present when the patient meets with a surgeon because the conference may improve his patient's decision making power," Tone wrote in the decision. "Bylaw 12.3.2.1 is unreliable (capricious) and illogical (arbitrary) and indeed stifles what attorneys are trained and retained to do." Thursday's ruling means Oliver will likely be able to participate in Oklahoma State's season opener against Brigham Young on Feb. 20, and Oklahoma State need not fear consequences of the "restitution" rule. Under that rule, the NCAA could penalize OSU after the fact for any games Oliver participates in if today's ruling were to be reversed later on appeal. But Tone wrote in the decision that the "restitution" rule (also known as NCAA Bylaw 19.7) is "overreaching and interferes with the judicial power of the court system."

Oklahoma State, which filed an appeal

Kiffin's Tennessee tenure off to rocky start after series of errors

KNOXVILLE, Tenn. — The past 10 days have offered a comedy of errors by new Tennessee football coach Lane Kiffin, but neither the university, the Southeastern Conference or the NCAA are laughing. Barely 10 weeks after being hired as Tennessee football coach, Kiffin mistakenly accused Florida coach Urban Meyer of a recruiting violation, then was found by UT officials to have committed three minor recruiting violations of his own. The gaffes captured headlines in sports pages across the country and are raising questions about whether the 33-year-old former Oakland Raiders head coach has a sufficient grasp of college recruiting rules or the enormity of his role as the top guy at a major college program.

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"He's basically learning on the job," said Matt Hayes, college football columnist for (cont. pg. 2) *The Sporting News*. "He's been a head coach for all of 20 games in the NFL. He's never been a head coach in college football."

But as an assistant, Kiffin was a key recruiter at powerhouse University of Southern California and like all college coaches, was required to pass an NCAA-mandated test on recruiting rules before being allowed to contact any prospects for UT. His recent missteps have put focus on whether that testing process is adequate.

"I don't think the test was ever meant to be all encompassing," said Greg Sankey, associate commissioner of compliance for the Southeastern Conference, "but it does begin to (address) the rules that coaches need to follow."

Multiple missteps

The string of controversies started Feb. 5 — the day after National Signing Day — when Kiffin and his new coaching staff made a day-long barnstorming tour of the state, meeting with boosters and media in Knoxville, then Nashville, then Memphis.

While playing to a crowd of UT fans during the first stop, Kiffin jokingly said he was calling out Meyer for a recruiting violation, saying the Florida coach placed cellphone calls to a player who was on an official visit to Tennessee. "I love the fact that Urban had to cheat and still didn't get him," Kiffin said of the player, who ultimately signed with UT.

The crowd loved it, but University of Florida and SEC officials weren't amused. By the time the UT contingent left Nashville that afternoon, league commissioner Mike Slive had publicly reprimanded Kiffin, advising him that the phone calls were not a violation and questioning the coach's knowledge of the rules.

Those questions grew louder four days later when UT officials announced they had issued letters of admonishment to Kiffin and new UT recruiting coordinator Ed Orgeron for a pair of secondary recruiting violations that occurred during official recruit visits last month.

In one case, a fog machine was used as a recruit ran onto the field at Neyland Stadium. In the other case, several recruits were allowed to take part in a mock press conference at the football facility. UT officials reported the incident to the NCAA, whose rules prohibit schools from simulating game conditions during recruit visits.

"The violations occurred due to an incorrect assumption by the football coaching staff regarding official visit activities," UT's letter to the NCAA stated. "They understand that they must ask questions of the compliance office about anything 'creative' regarding campus visits." Then, incredibly, it happened again.

On Friday, Kiffin went too far by describing an unsigned recruit's ability and using his name during a Knoxville radio show. The recruit, Bryce Brown, a running back from Wichita, who is rated the No. 1 recruit in the nation by Rivals.com, was scheduled to be in Knoxville for an official visit this weekend.

Under NCAA rules, a coach is allowed to confirm to the media that a specific player is being recruited but cannot comment about the recruit's ability. During the interview, Kiffin lumped Brown into a group of athletes he called "great players."

UT spokeswoman Tiffany Carpenter said the violation would be reported to the NCAA and the Southeastern Conference. Kiffin was unavailable for comment.

Kiffin passed test, but ...

Every NCAA coach must pass an exam that covers recruiting, financial aid and freshman academic requirements. For Division I football coaches, the test consists of 40 multiple-choice and true-false questions. A coach can miss no more than eight to pass. Typically, the tests are administered online through the various conferences.

Within days of Kiffin's hiring at UT in December, he traded barbs through the media with South Carolina coach Steve Spurrier, who wondered publicly whether Kiffin had taken his test before starting to contact recruits. Kiffin quickly jabbed back: "If Steve is concerned about my test, I got a 39 out of 40. I would like to see what he got."

TRIVIA: INTERPRETATIONS

Curve Ball, a baseball prospective student-athlete, is being recruited by several institutions. Curve participated in several all-star games this past fall, but most collegiate coaches were not able to attend these events. Is it permissible for the coaches to subscribe to a scouting service to obtain video of these all-star games?

No. NCAA Staff Interpretation- 2/18/09- Video from Recruiting or Scouting Services (I)- states that it is not permissible for an institution to subscribe to a recruiting or scouting service to obtain video (e.g., live streaming video, recorded video) of any nonscholastic activities, including regular game and all-star competition, or any summer camp or clinic competition, which is not considered regular game competition.

Finger Roll is a basketball student-athlete that attended College USA during the 2007-08 academic year. Because of personal reasons, Finger did not enroll at any institution during the 2008-09 academic year. Finger would like to return to College USA for the 2009 summer sessions. Since Finger was not enrolled during the previous academic year (2008-09), can College USA provide Finger with an athletic scholarship to attend summer school?

Yes. NCAA Official Interpretation- 4/26/91- Proportion of athletically related aid received during the previous academic year- states that the requirement that athletically related financial aid to attend an institution's summer term be awarded in proportion to the amount of athletically related financial aid received by the student-athlete during the previous academic year would relate only to the student-athlete's previous academic year (as opposed to the institution's previous academic year); therefore, a student-athlete who attended a member institution during the 1989-90 academic year but did not attend the institution during the 1990-91 academic year would be permitted to receive athletically related financial aid during the 1991 summer term in proportion to the amount of athletically related aid received during the 1989-90 academic year.

(Oliver) with the NCAA to restore Oliver's eligibility in the fall, issued a statement Thursday night in response to the decision.

"We are reviewing the decision from the court in Ohio and will determine a course of action at the appropriate time," OSU director of communications Gary Shutt said in the statement.

The NCAA issued its own statement through spokeswoman Stacey Osburn:

"We are disappointed in the judge's ruling. The bylaws related to agent relationships are important principles our colleges and universities have established to protect and preserve amateurism standards. We intend to seek a review of the decision by a higher court, and we are hopeful these significant standards will be preserved."

Tone addressed the "amateurism" issue in his decision.

"This Court appreciates that a fundamental goal of the member institutions and the Defendant is to preserve the clear line of demarcation between amateurism and professionalism," the judge wrote. "However, to suggest that Bylaw 12.3.2.1 accomplishes that purpose by instructing a student-athlete that his attorney cannot do what he has hired him or her to do, is simply illegitimate . . . no entity, other than that one designated by the state, can dictate to an attorney where, what, how or when he should represent his client. With all due respect, surely that decision shall not be determined by the NCAA and its member institutions, no matter what the Defendant utters is the purpose of the rule."

The jury trial phase of the case, to determine any monetary damages the NCAA might owe Oliver, will begin on March 20.

In the meantime, Oliver can focus again on baseball.

"Andy's delighted to have his life back," Johnson said. "This is not just him—this is a team sport. He's delighted to have his team's life back, his coaches' life back. It's not just Andy that lost his postseason last year, it's his whole team, and he's just delighted that now there's no uncertainty about who was right and wrong. The NCAA ruined 35 kids' dreams last year. That's a lot of harm."

MARCH/APRIL RECRUITING CALENDARS

Women's Basketball:

March 1– April 2 Contact
 April 3—April 9 Dead
 April 10– April 12 Quiet
 April 13-April 16 Dead
 April 17– April 21 Evaluation
 April 22– April 30 Quiet

Men's Basketball:

March 1- March 15 Evaluation
 March 16-March 22 Contact
 March 23– March 31 Evaluation
 April 1 Quiet
 April 2– 9 Dead Period
 April 9– 12 Contact
 April 13-16 Dead
 April 17-22 Contact
 April 23– April 30 Quiet

Softball:

March 1– April 5 Contact
 April 6– April 9 Dead
 April 10-April 30 Contact

Field Hockey, Soccer

March 1– April 30t Contact

Women's Lacrosse:

March 1 - April 5 Contact
 April 6– April 9 Dead

Cross Country & Track:

March 1 - March 12 Contact
 March 13-March 15 Dead
 March 16-April 30 Contact

Golf, Swimming & Diving, Tennis, Crew, Water Polo

March 1– April 5 Contact
 April 6 - April 9 Dead Period
 April 10– April 30 Contact

Men's Lacrosse:

March 1– April 5 Contact
 April 6– April 9 Dead
 April 10–April 30 Contact

Baseball:

March 1-April 5 Contact
 April 6-April 9 Dead
 April 10– April 30 Contact

Volleyball

March 1– April 5 Contact
 April 6– April 9 Dead
 April 10– April 30 Contact

Football:

March 1 – April 14 Quiet
 April 15—April 30 Evaluation

NLI SIGNING DATES 2009-2010:

- Basketball (regular period)
April 15-May 20, 2009
- Football (midyear JC transfer)
Dec. 17, 2008-Jan. 15, 2009
- Football (regular period)
Feb. 4-April 1, 2009
- Field Hockey & Soccer, Track & Field, Cross Country
Feb. 4-Aug. 1, 2009
- Other Sports (regular period)
April 8-Aug. 1, 2009



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updates and changes to the recruiting rules, school officials said.

Reached after Kiffin's first two violations but before the third, UT Athletic Director Mike Hamilton, cautioned against reading too much into the recent recruiting mistakes. Secondary violations are considered minor by the NCAA, often go unpunished and can be relatively common because of the sheer number of recruiting rules.

"These rules change," said Hamilton said who sits on the board of the NCAA Recruiting Task Force,. "I don't think there is a single employee in the athletic department, other than our compliance people, who knows every rule. And even our compliance guys are having to regularly interpret."

He added: "I am always concerned with the violations. But I am even more concerned if there are repeated violations."

Hamilton could not be reached for comment following the latest violation.

It's possible that some of the practices that landed Kiffin in hot water were brought from the stint as a successful recruiter at Southern Cal, where he was instrumental in helping land Heisman Trophy winners Reggie Bush, Matt Leinart and Carson Palmer. Coincidentally, University of Washington self-reported a secondary violation last month after head football coach Steve Sarkisian used a fog machine as recruits ran onto the football field during their visit there. Sarkisian and Kiffin were on the same coaching staff at USC from 2001-06.

Mistakes magnified by early comments

Kiffin's recruiting problems have been magnified, in part, because of the coach's bombastic public relations style. He's all but promised national championships, exclaimed how he isn't intimidated by the competition in the storied conference and verbally sparred with some of the SEC's biggest names.

Observers are divided over whether his public comments are the miscalculations of a young coach or an effort to artfully fire up a listless team and apathetic fan base.

No one can argue that Kiffin's brash style has put UT football back on the national stage, following an abysmal 5-7 season during which the Vols' were an SEC afterthought and failed to reach a bowl game.

"My opinion is Lane Kiffin knew exactly what he was doing," said CBS college football analyst Tony Barnhardt. "I believe that as the new guy on the block, he knew that he had to take on the big dog — or the big Gator as it were — and he decided to do it."

UT's star safety Eric Berry voiced support last week for his new coach's style and said Vols' players are increasingly excited about the level of fight in the new regime.

But others wonder if Kiffin is toppling the balance between pumping up his players and fan base, and remaining a reputable member of the coaching fraternity.

"I don't know where that line is, but it sure feels as if he crossed it," said Ivan Maisel, senior college football writer for ESPN.com. "I think every coach who comes into the SEC feels like he's got to stick his chest out and establish his turf. You expect a new coach, and especially a young coach trying to establish himself, to do some of this.

"You get a honeymoon in any new job in the SEC and that typically will last a year, maybe two if you're lucky. I think as far as expectations, his ended on Feb. 5. That might be a national record of some sort."

In the end, what matters will be what happens between the white lines on Saturday afternoons, said Hayes, the columnist from *The Sporting News*.

"His job is to win games, it's not to please opponents," he said. "That's what he is going to be judged on. He is not going to be judged on whether he said something inappropriate in a booster meeting where he was trying to fire up the fans.

"His job is to beat Florida, not to beat Florida in the court of public opinion."

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