

## Legal Issues in

# COLLEGIATE ATHLETICS

A Report of Court Decisions, Legislation and Regulations Affecting Collegiate Athletics

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*The NCAA Division I Committee on Infractions penalized Texas Southern University for major violations in its softball and men's and women's tennis programs. The former head coaches of the softball program and the men's and women's tennis programs committed violations that went undetected by the university.*



*Naples, collapsed after an offseason workout supervised by Knights Coach George O'Leary and his staff on March 18. He was transported to a nearby hospital and died about an hour later.*

#### 9 Setting the Trend in South Bend: Notre Dame Hires Sports Attorney as Athletic Director

*Notre Dame has reached outside of the box, and into the bar, by hiring prominent Indianapolis sports attorney Jack Swarbrick as its next*

*athletic director. Swarbrick fills the vacancy left by Kevin White, who accepted the same position at Duke University amid speculation that his authority to run the Notre Dame athletic department was compromised by the role of the Notre Dame Board of Trustees in the firing of football coach Tyrone Willingham and hiring of Charlie Weis.*

#### 3 Panel Affirms Antitrust Ruling, Handing NCAA Another Victory

*The 6th U.S. Circuit Court of Appeals has affirmed a lower court's ruling that the complaint of a former assistant football coach at the University of Kentucky, who alleged that the NCAA violated anti-trust laws by allegedly restricting his future employment, lacked "the critical commercial activity component required to permit application of the Sherman Act."*

#### 5 Duke Wins Contract Case Due to Bad Football Team

*Duke University's football team has lost many a game on the field. However, its poor record translates to a win in a Kentucky court of law by persuading a Kentucky trial judge that the failure of University of Louisville to find a "team of similar stature" to substitute for Duke negated any liability after Duke canceled two matches with its superior rival.*

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*The facts are simple. University of Central Florida football player Ereck Plancher, a 19-year-old redshirt freshman receiver from*

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*A former men's wrestling coach has survived a motion for summary judgment in a case where the coach alleged that Montclair State University retaliated against him in violation of Title VII and Title IX of the Civil Rights Act, the New Jersey Conscientious Employee Protection Act (NJCEPA) and the New Jersey Law against Discrimination (NJLAD) by not hiring him for its Head Wrestling Coach/Coordinator of Student Staffing position.*

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## Setting the Trend in South Bend: Notre Dame Hires Sports Attorney as Athletic Director

Notre Dame has reached outside of the box, and into the bar, by hiring prominent Indianapolis sports attorney Jack Swarbrick as its next athletic director. Swarbrick fills the vacancy left by Kevin White, who accepted the same position at Duke University amid speculation that his authority to run the Notre Dame athletic department was compromised by the role of the Notre Dame Board of Trustees in the firing of football coach Tyrone Willingham and hiring of Charlie Weis.

Swarbrick has no experience as an athletic director or university administrator. However, he has significant experience as a sports attorney, having served as general

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counsel for numerous national governing bodies of Olympic sports, including USA Gymnastics and USRowing. Swarbrick also played a significant role in the move of the NCAA offices to Indianapolis and

was a finalist for the position of NCAA President in 2002.

The Swarbrick hiring begs an interesting question: will colleges and universities follow Notre Dame's lead and consider attorneys for the position of athletic director? Perhaps. Collegiate athletics, at its highest level, is big business. The negotiation and interpretation of contracts has never been more important for an athletic director. Coaching contracts are constantly increasing in value. As a result, the business of representing college coaches is booming and contract negotiations are more intricate. In the wake of Jim O'Brien's \$3 million lawsuit against The Ohio State University, the use and enforcement of dismissal clauses in coaching contracts will surely receive greater consideration and scrutiny. The virtual free agency system that exists in the coaching profession has made popular the buyout clause, as demonstrated by the recently settled case of *West Virginia vs. Rich Rodriguez*.

Sponsorship deals with athletic uniform and equipment providers are also becoming larger and more complicated. The University of Connecticut and Nike recently agreed to a \$45.5 million contract, providing Nike with a bundle of rights including the exclusive rights to provide all athletic equipment, uniforms and advertisements at university sporting events. Last but not least, the application of NCAA rules and regulations continues to cause problems for athletic departments, which often turn to the guidance of counsel.

In the changing world of collegiate athletics, an attorney can offer a perspective and level of expertise to the position of athletic director that cannot be provided by all administrators. Of course for Swarbrick, he will not be judged on his legal acumen, but rather on whether Notre Dame football returns to its past glory. As a Notre Dame alumni, it is a standard of which Swarbrick is undoubtedly aware. ■

## Coach Continues with Retaliation Claim After Court Denies Summary Judgment

A former men's wrestling coach has survived a motion for summary judgment in a case where the coach alleged that Montclair State University retaliated against him in violation of Title VII and Title IX of the Civil Rights Act, the New Jersey Conscientious Employee Protection Act (NJCEPA) and the New Jersey Law against Discrimination (NJLAD) by not hiring him for its Head Wrestling Coach/Coordinator of Student Staffing position.

In so ruling, the court reasoned that there "are issues of material fact relating to the purported reasons for the defendant's hiring of (two other candidates) when Plaintiff had been a successful head coach at the school and was apparently qualified for the job."

Joseph Sabol became a volunteer assistant wrestling coach at MSU in 2001. Later that year, he became the school's assistant wrestling coach. On October 18, 2002, the school hired him to serve as acting head wrestling coach after the head coach was

suspended by the NCAA. After the suspension was lifted, the plaintiff returned to his assistant position. Both coaches reported to Holly Gera, the athletic director at MSU.

In early 2004, the head coach notified MSU that he was resigning. The plaintiff submitted an application for the position of part-time head coach, was interviewed by Holly Gera and Robert Chesney, Associate Director of Athletics at MSU, and then hired for that position. While Plaintiff was head coach, the 2004-2005 wrestling team had the second highest grade point average of all men's athletic teams.

"As head coach, the plaintiff complained about health and safety issues to Gera, such as wrestling mats having been damaged by a leak in the ceiling and the wrestling room being used as a thoroughfare, causing bacteria from the traffic to land on the mats, which could lead to skin infections," wrote the court. "Also, the plaintiff complained that there was no wall padding along the sides

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