

Sports Litigation Alert

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An Analysis of a Court's Decision to Deny Injunctive Relief to Michael McAdoo

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Judge Orlando Hudson of Durham County denied North Carolina defensive end Michael McAdoo's request for a permanent injunction that would allow him to play football as a Tar Heel this upcoming season. McAdoo recently filed a complaint in Durham County against the NCAA, UNC Chapel Hill, and its Chancellor in his official capacity alleging that McAdoo's punishment for receiving \$110.00 in impermissible benefits under the NCAA bylaws was grossly disproportionate to the facts. The NCAA previously declared McAdoo permanently ineligible in November 2010 due to academic violations and an alleged receipt of benefits from a prospective agent. McAdoo and six teammates were forced sit out last season amidst an investigation by the NCAA for similar violations.

McAdoo's complaint, filed on July 1, 2011, alleged that during a 2010 vacation to Washington D.C. with two teammates, he stayed in an \$89.00 per night hotel room that was, unbeknownst to him, paid for by Todd Stewart, a prospective agent under NCAA Bylaws. McAdoo also went to a nightclub without paying the \$10.00 cover charge, believing that his teammate had paid for him. A UNC investigation later revealed that either Stewart or another friend had made it possible for McAdoo to enter without paying. McAdoo claimed that he had no knowledge that a prospective agent had

given him such benefits, totaling \$99.00, and further, that permanent ineligibility is a grossly disproportionate punishment in comparison to the violation.

McAdoo's complaint further alleged that he did not know that his long-time student tutor recently graduated from UNC and was no longer a student employee when she provided him with approximately one hour of tutoring valued at \$11.00. McAdoo did not pay for her tutoring and the NCAA found that this was an "improper extra tutoring benefit." The tutor allegedly provided McAdoo with spelling and grammar corrections as well as eight citations on his works-cited page. The UNC Honor Court declared this impermissible assistance from a tutor, a violation that placed him on academic probation during the 2010 football season. Interestingly it was later discovered that passages of the paper, attached as an exhibit to the complaint, had been directly lifted from other sources, making McAdoo's arguments substantially less credible. The NCAA's attorney suggested that this possible plagiarism would be further exposed later in the case. McAdoo's explanation is that he had no knowledge that the tutor was no longer a student or could not be his tutor (even though he was assigned a new tutor), and that he had no reason to believe that the assistance was improper, as she had been providing him with similar assistance since the start of his college career.

UNC initially reported both instances to the NCAA in September 2010 after declaring McAdoo ineligible for violations of Bylaws 12.3.1.2 ("Benefits from Prospective Agents"), 16.02.3 and 16.11.12 ("Nonpermissible Extra Benefit"), later adding a violation of Bylaw 10.1-(b) ("Unethical Conduct"). The complaint alleged that UNC had previously sent an "anonymous hypothetical" to the NCAA for analysis, omitting the fact that the anonymous student unknowingly accepted monetary and academic benefits. The NCAA informed UNC that based on this hypothetical, there was a violation of Bylaw 10.1(b) that forbids "knowing involve-



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ment in arranging for fraudulent academic credit or false transcripts for a prospective or an enrolled student athlete.” In October, the UNC Honor Court determined that McAdoo had violated the Honor Code by accepting his tutor’s help and handing in a paper not entirely created on his own in one class. The Honor Court did not conclude that McAdoo was guilty of the charges in two additional classes. The Honor Court’s findings specifically allowed McAdoo to play football this season. McAdoo claimed that UNC reported his actions prior to receiving the Honor Court’s adjudication and failed to inform the NCAA of the Honor Court’s findings prior to its November determination. The NCAA presumes permanent ineligibility when it receives allegations of academic fraud, but will look to mitigating factors to determine future eligibility. In January, the NCAA denied UNC’s appeal on McAdoo’s behalf. The complaint emphasized McAdoo’s lack of independent legal representation throughout the process.

McAdoo claimed breach of express contract against UNC for reporting violations that had not been confirmed by the Honor Court. Additionally, he claimed breach of fiduciary duty against UNC and the Chancellor for failure to adequately and appropriately investigate the alleged violations. McAdoo further alleged, as a third-party beneficiary, breach of contract against the NCAA and UNC for UNC’s reporting of a violation of Bylaw 10.1-(b) despite its awareness that McAdoo did not knowingly accept his tutor’s assistance and for the NCAA’s declaration of permanent ineligibility in spite of these facts.

The fourth claim alleged negligence against the NCAA for breaching its duty to use reasonable care and to not act in an arbitrary or capricious manner. McAdoo also brought two claims for gross negligence against the NCAA for: 1) willfully and wantonly making its eligibility decision without a good faith basis to find that McAdoo received impermissible assistance on several assignments; and 2) for refusing to change its decision even after receiving the Honor Court’s findings from McAdoo’s counsel in June 2011. Further, the complaint alleged libel and tortious interference with contract against the NCAA.

A motion also sought declaratory relief due to the NCAA’s arbitrary decisions and violation of his due process rights under the North Carolina Constitution

and asked for a mandatory injunction as well as preliminary and permanent injunctive relief to prevent the NCAA from imposing any eligibility restriction. McAdoo also seeks monetary relief in an amount to be determined at trial.

Judge Hudson’s ruling denying McAdoo’s injunctive relief is certainly not the end of McAdoo’s case, though McAdoo will not be able to practice or play with the team this year. Judge Hudson merely determined that the case did not meet the threshold requirements to warrant an injunction because it was not clear that McAdoo would suffer irreparable harm if the injunction was not granted. All defendants have until July 31, 2011, to respond to the allegations. Based on the arguments made at the injunction hearing, the NCAA’s position is likely to be that McAdoo “cheated” and should be punished accordingly. UNC has repeatedly stated that McAdoo’s punishment is “too harsh,” though the NCAA takes allegations of academic fraud quite seriously. Its general policy is, “sit a year, charge a year,” which eliminates two years of a student athlete’s eligibility. Given that McAdoo is a senior, an affirmative violation of Bylaw 10.1 would end his collegiate career.

There is a NCAA hearing scheduled in October in Indianapolis once UNC responds to the NCAA’s Notice of Allegations, and McAdoo’s debacle is just one piece in the investigation of violations by the UNC football program. However, UNC has shown support for its former defensive end by submitting an affidavit stating that it would allow McAdoo to continue his education on scholarship and allow him to serve as a student coach in the fall. This, of course, does not compare to McAdoo stepping onto the field for his last season to play for a team that sends more than its fair share of athletes to the NFL Draft.

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