

ADVISOR



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Effectively Observe Your Officials

Mark Naugle, a basketball observer in South Dakota, discusses keys to observing officials.

Lawsuit Proof

By Donald C. Collins

Officials associations are often involved in dispensing game assignments. Those associations literally play a role in deciding who makes money, who doesn't make money and who gets to officiate a relatively limited number of prestigious games. Officials associations also take things away from officials by fining, penalizing and disciplining them. When you're involved in giving and taking away resources, you are always vulnerable to a lawsuit.

The first thing an association needs to do is protect itself from employment-related lawsuits. That sounds simple, as most officials will tell you that they're independent contractors. But in truth, officials associations are subject to employment law even if their member officials are independent contractors. Officials' independent contractor status generally takes the form of exemptions from workers compensation laws and unemployment insurance laws. Those are very limited exemptions, and they simply don't impact employment-related lawsuits. Officials associations are the legal equivalent of a temp agency or a union hiring hall. They may or may not be employers, but they decide who gets the work and the government simply does not give them an exemption from employment-related lawsuits.

Employment-related lawsuits can take a number of forms. The most common forms are discrimination suits based on color, race, religion, gender, national origin, age and disability. But officials associations have an additional problem. All of their game assignments aren't equal, and all of their officials aren't equally qualified. The result is

a morass of potentially disappointed officials who can have a wide array of legal complaints.

Under the wrong circumstances, disappointed officials can bring lawsuits ranging from the aforementioned employment discrimination suits to a wide array of suits that claim that an officials association is violating some standard that it's compelled to meet. Usually, that standard is set forth in the association's bylaws. Occasionally, the standards are mandated by a state governing body or by state legislation.

An association's best protection from an employment lawsuit is to make sure that its bylaws: (a) provide a clear system of rating and evaluating officials; (b) link the evaluations/ratings to game assignments; (c) have clear requirements and procedures for training, meetings, testing and any other membership mandates; (d) clearly state what fines, penalties and other discipline apply to violations of various mandates; (e) have notice, hearing and appeal procedures for members who are being fined, penalized or subject to discipline; (f)

try to separate the panels that issue fines, penalties and other discipline from the panels that hear appeals or hear grievances; and (g) have clear election and/or appointment standards and procedures for various board and committee positions.

Having good bylaws is not enough, though. Associations need to constantly assess their actions to make sure that the actions square with the bylaws. The assessment should start by looking at elections and appointments. Election and appointment disputes are a frequent source of conflict that can give rise to lawsuits.

The assessment should also make sure that the association hasn't changed its procedures over time. For example, many associations give electronic notice, hold electronic elections and post documents on websites while their bylaws mandate that all of those things be done by mail. That seems benign until a member sues and claims they never received proper notice of charges against them or worse, that the board member or

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Who Is Leading Your Association?

By Lawrence Tomei

Here's a simple question: Who's in charge? In some officials associations or chapters, important decisions are focused in the board of directors. In others, the officers (centered on the president) are

responsible for all key outcomes. In still others, confusion reigns, leaving the membership uncertain who has the last word. If you had to pick, which scenario describes your association and which situation would you prefer?

Look to your bylaws for the answer. Bylaws define how an

organization is managed and how it will conduct business. They parse out authority and decision-making and specify who should carry out governance responsibilities. They create a framework for the organization and aid in precluding, averting or resolving disputes. They also call out rules, meetings and elections. Every organization should have an adopted set of bylaws that are reviewed and revised periodically. If your bylaws are current, in theory governance should be simple. Reality, however, can be an altogether different matter. So, let's help by laying out some ground rules.

DIRECTORS

A board of directors (the "board") has final responsibility for the legal and financial management of the organization. Individuals comprise the board; however, the board only acts when it is in session. The board's role is to establish the mission, goals, policies and strategic direction. Decisions like approving the budget, setting policy, working to ensure sufficient resources, determining the strategy to achieve the mission and assessing success

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Editor: Julie Sternberg
email: jsternberg@naso.org

Graphic Designer: Ross Bray
email: rbray@naso.org

Contributors:
Tim Sloan, Don Collins, Patrick Rosenow, Alan Goldberger, Lawrence Tomei, Carl Smith, David Westol, Bob Masucci, Todd Korth, Dan Olson, Jeffrey Stern, Brent Killackey, Chris Szolyga

NASO Board of Directors:
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Debbie Williamson, Livingston, Ala.
Tom Washington, Atlanta

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Phone 262-632-5448 FAX 262-632-5460
Email advantage@naso.org Website nasoadvantage.com

are examples of legitimate board responsibilities. Boards generally do not carry out the normal operations of the chapter; instead, they delegate authority to the officers for the day-to-day activities.

OFFICERS

Officers are individuals elected or appointed to carry out the routine business of the chapter within their delegated scope of authority. That scope is defined by the bylaws of the chapter or delegated by the board and documented in their minutes. For chapters such as ours, the board may set the parameters for the election of a president, charging him or her with supervising and controlling the business affairs of the organization; for example, signing contracts and committing expenses within an approved budget. Most associations will elect a president, vice president, recording and assigning secretaries and a treasurer. Once the board delegates authority to those officers, they are empowered to act on behalf of the chapter within the scope of their delegated authority.

MEMBERS

Having active, involved members is the lifeblood of any organization. For association members, merely taking a game schedule and attending an established number of rules interpretation meetings are not enough. They often give adequate time and energy back to the association. Most board and chapter officers are unpaid volunteers. Members owe them to be:

Good followers. That means members can handle training, directions and criticism. They are open to new ideas and suggestions without becoming defensive. They uphold the values and objectives of the organization.

Active not passive. Members need the ability to acquire, evaluate and integrate information necessary to complete an assignment. They will ask questions to clarify goals or values. They contribute to training sessions and participate as decision-makers in the business of the association.

Responsible. Members should accept responsibility for actions and for decisions of the group. It's OK to

question or even oppose actions that are against the "good of the order." Once a decision is made, they should support it.

Loyal and dependable. Finally, good members or followers act with integrity and recognize they cannot always have their own way. They feel good about themselves by contributing to the group and its goals and helping to achieve those goals.

Whether it's a small chapter or a large officials' organization, I have found a few tips to share that will build an environment for success. Preceding each tip is a suggestion as to who has primary responsibility: the board, the officers, or the membership.

1. Board: Establish strategic objectives.

Defining the objectives and measures of success for the association is the ultimate responsibility of the board. Officers and members should refer often to those established goals and use them to put what matters front and center. Measuring performance against the stated objectives is also critical.

2. Officers: Get the right people on — and off — the bus.

When it comes to members of the team, take attitude over aptitude any day. People who want to succeed generally will if they're supported with the right resources and environment.

3. Membership: Demonstrate commitment.

Members should demonstrate that they are invested in the success of the association and committed to its stated objectives.

4. Everyone: Be a coach.

We deal with coaches all the time. The best coach pushes people and offers support. A coach celebrates victory. Providing positive feedback and thanks for a job well done shows that your organization values, recognizes and rewards even small successes.

So, who's leading your association?

Lawrence Tomei is the vice provost for academic affairs at Robert Morris University in Pittsburgh. He has been a member of the West Penn Football Officials Association since 1994 and its president since 2013. ☐

MICP Q&A

Testify About the Game

By Patrick Rosenow

Q A few years ago, during a game I was officiating, a student-athlete was injured when he ran into a table that was on the football sidelines. The parents of the athlete later sued the host school. I was recently notified that I will need to testify for the case. Since it has been a few years, I don't remember many of the details of the game. I have never testified in court before. What should I do to prepare?

A Attorneys and judges often forget that taking the witness chair in a courtroom or even a conference room in the case of a deposition can be very unsettling for people who don't make their living in that environment. Truth be told, on those occasions when the shoe is on the other foot and lawyers are on the stand answering the questions, we can suffer our share of anxiety.

The bottom line, though, is all you really have to do is tell the truth to the best of your ability. If you had some personal notes or a report you wrote at the time, it might be a good idea to review them and see if they can refresh your recollection. On the other hand, you need to be careful about looking at anyone else's account or talking to others on the crew about what happened. Although they might help you remember some things, they may also prompt you to fill in some blanks not with your memory, but with someone else's.

It's good that you were not named in the suit, since a more aggressive plaintiff's lawyer might have alleged that the game officials were equally at fault for allowing the game to be played with a table negligently placed by the sideline. It might not be a bad idea to run your situation by an attorney to make sure any statute of limitations has run as to you and your crew and discuss whether you could have any personal exposure. In fact, your case is a great example of how NASO's Member Information and Consultation Program (MICP) can be a great resource.

You will probably be asked if you noticed the table was there and if you did, why you didn't have it moved. The school would like you to say that you didn't move the table because it was in a reasonable location. It will then argue that the injury was an inherent risk of a playing football, which can never be made totally safe. The player's attorney will want to try to establish that it was unsafe and may be much more aggressive in his questioning, particularly if you were called to testify by the school to prove the table was safe.

The side that called you will likely tell you what it is going to ask you about. You may be interviewed by one or both sides before trial. No matter who called you, and whether you are being interviewed or testifying under oath, try to relax, take your time, make sure you understand the question, and answer it as truthfully as you can. If you don't remember or can't be sure of an answer, say so. Don't guess or say, "I think it might have been ..." If the lawyers want you to give your best guess on a question, they can ask the question that way. If there is an objection, stop talking until the judge instructs you to continue.

It's not your job to help either side, or even to justify what you or your crew did that night. Your only job is to tell the truth without embellishment or spin. It sounds easier than it is, but stick to the facts as you recall them, and you'll be fine.

Patrick Rosenow, Mandeville, La., is a retired Air Force judge who now sits as a federal labor administrative law judge. He officiated basketball at the high school, college and international levels. This article is for informational purposes and not legal advice. ☐

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BYLAW BIT

Don't put too much in the bylaws. You want to be able to make certain changes in your association without a formal change in the bylaws.

THE PULSE

Local Association News Nationwide

MSHSL Aims to Thank Sports Officials

The Minnesota State High School League (MSHSL) started a program that recognizes the contributions of sports officials.

The MSHSL encourages its schools to participate in its "Thank A Ref" campaign.

"A kind word of thanks toward officials for all they do is the sole purpose of this endeavor," the MSHSL website stated. "Without officials, our games and contests cannot be held. Officials play an integral part in the events enjoyed by high school students, parents and the entire community."

Minnesota has more than 6,000 registered officials.

"The more than 500 member schools of the Minnesota State High School League extend their appreciation and thanks to all game officials," the website stated. "Without them, the games are just recess. Coaches, participants and fans are encouraged to show their appreciation by demonstrating respect for them and the difficult job they do."

NDOA Announce Hall of Fame Inductees

The North Dakota Officials Association (NDOA) announced in September that five officials will be inducted in the NDOA Hall of Fame for 2015-16. The inductees are: Jerry Ford of Lisbon, who officiated basketball for 35 years including three Class B state tournaments; Jim Kindschi of Bismarck, who has officiated 18 state swimming and diving meets; Mark Luther of Minot, who umpired baseball for 37 years including 20 state tournaments; Ron Seeley of Williston, a longtime baseball and football official; and Karen Dahlseng of Fargo, a 37-year veteran of gymnastics officiating who served as the meet referee at five state gymnastics meets. The North Dakota Officials Association has inducted 132 officials into its Hall of Fame since its inaugural class in 1965.

Goldberger Speaks for ECAC Program

Alan Goldberger, author of *Sports Officiating: A Legal Guide* and NASO/Referee contributor, was a featured speaker at "The Intersection of Sports and Education Law," on Oct. 23 by the Connecticut Bar Association in conjunction with the Sports Lawyers Association. The program, hosted by the Eastern College Athletic Conference (ECAC) at its headquarters in Danbury, Conn., featured issues related to sports law and education law.

Goldberger, a partner in the Summit, N.J., law firm of Brown Moskowitz & Kallen and a former three-sport official, is a frequent speaker to groups of sports officials, coaches, athletic administrators and attorneys nationwide.

SOURCES: INFORUM.COM, SUN SENTINEL

Association Advantage Tops 1,000 Memberships

NASO's Association Advantage has swelled to more than 1,000 associations across the nation and two associations in Australia. Thousands of NASO members are with associations under Association Advantage's Platinum, Titanium Shield, Titanium, Titanium Shield and Diamond programs.

Those five programs offer varying degrees of liability insurance protection, educational materials and benefits to association members and board members. Go to nasoadvantage.com for more information on each of those programs.

Of the more than 1,000 associations in Association Advantage, Ohio has the most as of this printing with 282, followed by California, 116; Illinois, 114; and Washington, 104.

Association Advantage's Diamond program is the most comprehensive of the programs. The Diamond program fully protects both the organization and individual members, including full training and testing with an emphasis on video.

A total of 44 associations are within the Diamond program, led by the California Basketball Officials Association and its 28 units. The Southern California Volleyball Officials Association includes 13 units. Diamond members receive general liability coverage with \$1 million per occurrence and \$5 million aggregate, free access to the Member Information & Consultation Program (MICP), and full individual NASO membership for all of its members.

In addition to the NASO general liability coverage that is included in the Titanium Shield and Platinum Shield programs, Diamond program members also can utilize an association "Meetings in a Box" training program that includes up to six lesson plans, video plays, digital presentations, handouts, instructor guidebooks and online testing.

A total of 145 associations that include more than 26,000 members have taken advantage of NASO's general liability coverage to different degrees, depending on their

association's needs, through the Platinum Shield and Titanium Shield programs.

Here are a few facts regarding the Platinum Shield and Titanium Shield associations:

Of the Platinum Shield and Titanium Shield associations, the average number of members is 67 and the average number of board members is four. Associations with the most members, include:

- Capital Area Soccer Referees Association, Maryland (2,500).
- Peninsula Sports Inc., Monterey, Calif. (1,400).
- Metro Detroit Officials, Detroit (560).
- Greater Kansas City Officials Association, Kansas City, Mo. (511).
- Third District Officials Association, Boise, Idaho (500).
- Fox Valley Blues Umpires Association, Crystal Lake, Ill. (475).
- Contra Costa Athletic Assigners, Antioch, Calif. (455).
- Eastern Association Intercollegiate Football Officials, Pittsfield, Mass. (458).
- Copper State Umpires Association, Glendale, Ariz. (397).

More than 50 of the associations are from California with others spread from the East Coast to the West Coast.

Association Advantage is making a difference across the country. If your association is interested in upgrading its level of protection or benefits, call 800-733-6100 x132 or email advantage@naso.org.

QUICK TIP

PROTECT THE ACCUSED

Officials associations should have a policy that gives an official an opportunity to defend himself or herself before accusers. There is certainly a chance the official didn't do what he or she is accused of doing.

ASSOCIATION ADVANTAGE

WE HAVE A SOLUTION TO MEET YOUR NEEDS

PLATINUM

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- » Guide to Local Association Management
- » Member's Only Online Database
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- » 12 Monthly Issues of *Advisor*
- » Click digital newsletter
- » Free Subscription to *Referee* magazine

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BENEFITS

SAME BENEFITS AS PLATINUM

ADDED VALUE

- » Full Individual Membership for Each of Your Board Members (Up to 7)

PROTECTION

- » \$1 million General Liability Coverage for Your Association
- » \$50,000 Game Call & Assigners Coverage

TITANIUM

BENEFITS

- » Guide to Local Association Management
- » Member's Only Online Database
- » Member's Only Website
- » 20% Cliff Keen Discount (Promo Code: ckadvantage)
- » 12 Monthly Issues of *Advisor*
- » Click digital newsletter
- » Free Subscription to *Referee* magazine

ADDED VALUE

- » Full NASO Membership for Each of Your Officials

PROTECTION

- » \$3 Million in General Liability Coverage for Your Officials
- » \$50,000 Game Call & Assigners Coverage
- » \$10,000 Assault Protection
- » Free Access to the Member Information & Consultation Program

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DIAMOND

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- » Guide to Local Association Management
- » Member's Only Online Database
- » Member's Only Website
- » 20% Cliff Keen Discount (Promo Code: ckadvantage)
- » 12 Monthly Issues of *Advisor*
- » Click digital newsletter
- » Free Subscription to *Referee* magazine

ADDED VALUE

- » Full NASO Membership for Each of Your Officials
- » Turnkey Training Program
- » Video Plays
- » Lesson Plans
- » Officials Edge: Training & Resource Manual
- » Officials Edge: Instructor's Manuals
- » Rulebooks
- » Mechanics Manuals
- » Online Testing
- » Dedicated Website for Your Association

PROTECTION

- » \$1 million General Liability Coverage for Your Association
- » \$3 Million in General Liability Coverage for Your Officials
- » \$50,000 Game Call & Assigners Coverage
- » \$10,000 Assault Protection
- » Free Access to the Member Information & Consultation Program



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HOW TO...

PREPARE NEW MEMBERS FOR CHALLENGES

Many new officials leave officiating after the first or second year. Why? While there are a variety of reasons, sometimes it comes down to the fact that officiating isn't what the individuals expected. Maybe the rules are too difficult, the parents are too harsh or new officials just didn't feel comfortable turning toward fellow officials when they needed help. Often retention comes down to preparation. If new officials are prepared and have solid resources around them, they just might stay when the going gets tough.

1. Spell out the challenges.

Officiating has a lot of benefits and associations often "shout out" those positives when trying to get new officials to join the ranks. But recruitment needs to lead to retention in order to have enough officials. As a result, leaders should share with new officials the challenges as well before they go out onto the field or court. "Fans can be brutal." "It's difficult to keep up with the speed of the game." "Fellow officials might be tough on you." "You're going to make a lot of mistakes." Those are just some of the truths you should share to prepare newer officials.

2. Challenge them during training.

Whether it's in the classroom or onfield or oncourt training, don't make things easy for new officials. By challenging them in the safe confines of your association training sessions, you will be preparing them for harsh game situations.

3. Share educational opportunities.

The more educational opportunities and rules testing you can provide to rookies, the better off they will be. Sometimes it's best to have classes for new officials in addition to the regular training meetings to allow them to reinforce their personal rules study.

4. Give them comfort in knowing they are not alone.

Share some of the mistakes you made as a rookie with new officials starting out. It can be a comfort to know that even successful officials can have shaky starts.

5. Provide a mentor to turn to during difficult times.

Some groups assign new officials to games with mentor officials. Others match a rookie with a veteran early on during an association meeting. It gives the officials someone to call with questions or allows the veteran a chance to encourage a newcomer. Having a helpful outlet is extremely important for officials.

Straight Talk With Mark Naugle Effectively Observe Your Officials



Mark Naugle, 45, observes basketball officials for the South Dakota High School Activities Association. A resident of Custer, S.D., he is superintendent of that city's school district. An ankle injury suffered in an auto accident prematurely ended his own oncourt career.

ADVISOR: How many officials do you observe in an average year?

NAUGLE: I'm guessing 50. Last year was my first year as a full-time observer and not a referee/observer.

ADVISOR: You observe boys' and girls' officials?

NAUGLE: Correct.

ADVISOR: When you're observing, is it better that the officials know you're there, or would you rather be surreptitious?

NAUGLE: I always announce myself before the game. I prefer to ask the officials what they want me to watch. To me, the evaluation process is to help make them better. It's not for me to surprise them with things they're doing wrong. I equate it a lot to observing teachers. Whenever I observed teachers as an administrator, I asked them what they wanted to get better at. What do you want me to watch for? Most people have an idea of what they need to work on. If I ask them what are they working on, and they say, "Oh, everything." Well, really, everything? You've got to have something you know you need to get better at. The people who are really prospects and can analyze their abilities always have something they want to get better.

ADVISOR: Are you watching officials simply to help them get better, or are you looking for tournament prospects?

NAUGLE: My job is to help select state tournament officials. I did it as an active official for two or three years (while still officiating) and that was just to help them get better. This is now the next level of the process. In the past

the state has targeted certain groups — officials with three to six years of experience, and not so much the 30-year veterans.

ADVISOR: What are some obvious red flags that make you think a person's not ready to advance?

NAUGLE: The lack of interaction in the postgame evaluation. That look like, "I don't care what you say, I'm not going to listen to you; I don't need to get any better." That's really a turnoff for me. Everyone can get better. I view the evaluation process as a chance to help somebody improve, because every game you should be able to get a little bit better at something. Or people you can tell stop listening as soon as you start talking. If they're not willing to participate in the process — what did you think on this call? Or how did you handle this situation? Or just in general talk about their game — that is something that really is a red flag for me.

ADVISOR: What sort of things will make you sit up in your seat and say, "Wow, this person really has it"?

NAUGLE: I really look for a patient whistle, letting the play start, develop and finish. I think that is a very difficult skill to learn, and I really notice it when people are good at it. That makes our calls so much more accurate. I also look for officials who are willing to just move to improve, and are active. I don't know how you can referee a game and not move slightly on almost every pass. I look for that. If someone is standing in the corner of the halfcourt line and the sideline and they're working the trail from there, how much game are you missing? I also look for body language. Are they relaxed in what they do? When the coach has a question, how do they respond? Is their face red? Are they in an aggressive pose? Or are they relaxed and listening more than they're talking?

ADVISOR: Do you like to give them a cooling off period, or do you want to go in right away while everything is still fresh on everybody's minds?

NAUGLE: I usually go in right away. I guess I've never felt we needed

a cooling off period. Most of the officials are people I worked with my last year, so that helps.

ADVISOR: How hard is it to be objective when it's somebody you know or somebody you've worked with?

NAUGLE: I think it depends on their attitude. If they're somebody that I know who wants to get better and values my input, then I really enjoy the process.

ADVISOR: When you have to be critical, how do you deliver criticism without just blowing them up?

NAUGLE: With someone that thinks they've never missed a call and doesn't care what I think, the conversation isn't going to go very far. If it's someone who wants to get better and likes to talk about the game and the plays, we're going to have a good conversation.

ADVISOR: Have you ever had an official say, "I had a bad day. Can you watch me again, because I can really do better?"

NAUGLE: No, I haven't had that, but I would respect that. We're human. If somebody said that I would certainly watch them again. I'm not the only observer or evaluator in the area. They often have two or three different people watch them, so that helps, too. But if somebody asked that I would certainly do that. I'd respect that.

ADVISOR: Does the type of game affect your evaluation?

NAUGLE: I don't think it plays into my evaluation. I think it plays into how the game is officiated because the kids dictate what's going to be called. There are always going to be certain plays I'll ask about. I'm still going to observe the same things: positioning, patient whistle, rules.

ADVISOR: Do you get paid?

NAUGLE: Yes, I think it's \$20, and with some mileage. But I'd do it for nothing. ☒

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Your commitment to the officiating industry is clear through your NASO membership. NASO members are committed not only to improving their own officiating, but also to improving, professionalizing and enhancing the image of officials and officiating everywhere.



The NASO Speakers Bureau exists

to reach outside of the officiating industry and present officials in the best light possible, educating corporations, associations and other large organizations about the life skills officiating teaches each of us — leadership, integrity, courage, decisiveness, judgment and mental toughness.

To continue reaching outside of the officiating industry, we ask you — the NASO members — to help guide us in the right direction. All sports officials have contacts, friends, business partners and colleagues in endeavors outside

of the officiating universe. Use your influence with those contacts to help provide an officiating speaker for their next event.

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+ Lawsuit Proof

continued from p.1

committee member who took an action was improperly elected or appointed.

Employment lawsuits are not the only lawsuits that associations must address. Associations can be liable for negligently training their member officials. Associations used to be able to address that problem by training officials to conduct safety checks on the fields and courts of play. Now, associations have to do more.

Associations have to train their member officials on signs and symptoms of concussions because officials have a duty to remove players who exhibit such signs and symptoms. In some states, the duty and the means of training may be enshrined in the governing body's bylaws or in state legislation. Officials also have to monitor changes in state laws and in governing body requirements to see if they're gaining any new duties. For example, in the past few years we've seen a number of states pass sudden cardiac arrest removal and return-to-play protocols. Officials in those states need to make sure that those

laws are not written in a way that may impose some new duties upon them.

Finally, associations have to be sensitive to the changing nature of some of our sports. A number of states now have events for athletes with physical and intellectual disabilities. That could lead to current officials having to learn new rules. It could also lead to a gradual influx of disabled officials. The wise officials association would begin addressing questions such as whether an official with a prosthetic could cover an able-bodied basketball game, whether a wheelchair official could work a track meet, and what if any, accommodations any of those officials would need. In short, officials associations may need to take a refresher course on the Americans With Disabilities Act sooner rather than later.

Officials associations are at a crossroads. Associations need to continue to operate under the current paradigm and act to reduce lawsuits under that paradigm. But associations need to be flexible enough to adjust to what could be a new paradigm involving player safety and new sports playing

populaces. Change could be coming ... but officials have always dealt with change, and will undoubtedly continue to do so.

Donald C. Collins is the executive director of the San Francisco Section of the California Interscholastic Federation. He is a longtime basketball official and lawyer. This article is for informational purposes and is not legal advice. ☒

NEW ADVANTAGE

Association Advantage currently has more than 1,000 members. In all, those groups represent more than 100,000 individual officials. We welcome our newest Association Advantage member associations, listed below along with their home cities and contact persons:

California: St. Isidore CYO Basketball, Danville (Rick Medeiros)

Washington: Seattle Officials of Women's Basketball, Seattle (Steve Latimer)

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