

## Pitfalls of Handshake Agreements

By Patrick Rosenow



Maybe you've heard the old saw, "An oral contract isn't worth the paper it's written on." That, as I found out in my first year of law school, is not necessarily true. In fact, oral contracts can be just as binding as written ones. Nevertheless, if you're entering into any agreement on behalf of your officials' association, there are good reasons why you should do it in writing.

First of all, putting things on paper forces everyone to take a moment to consider what they're agreeing to. The process of deciding what to put down on paper may well lead you to anticipate things you might not have thought of in a brief handshake deal.

Second, it minimizes the potential for confusion. The main reason the law favors written contracts is to avoid he said/she said disputes about what the parties really agreed to.

Finally, having something in writing tends to solemnize the agreement and give it more significance. The document will always tend to carry more weight than the recalled oral statement. We all instinctively tend to ask, "Have you got it in writing?"

What does all that mean to the leadership of an officials group? The same principles that apply in day-to-day business affairs should apply in managing your officials association. Most associations enter into either expressed or implied agreements with various individuals or organizations. At a minimum, your group has agreements with its members, the leagues or schools you service and probably the person you pay to do assigning.

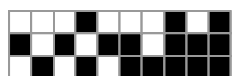
Many times the terms of the relationships between the group and its members are set out in a group constitution or set of bylaws. A more

*(See Handshake page 7)*

## Modern Association Management Part II

### The Educational Climate

By Donald Collins



### Inside

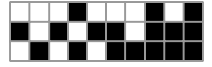
<b>Producing Meetings Members Yearn For.....</b>	<b>2</b>
<b>LOAN Benefits Corner.....</b>	<b>3</b>
<b>Gaining the Mental Advantage.....</b>	<b>4</b>
<b>Lesson Plan.....</b>	<b>4-5</b>
<b>NewsNet Index – 2002.....</b>	<b>8</b>
<b>LOAN Growth.....</b>	<b>8</b>

Last month, association's bylaws were focused on how to utilize them to compel officials to be educated and trained. This month we look at creating an educational climate conducive to associations and their members.

Associations should create a climate of education and support. Such a climate creates buy-in, reducing the likelihood members will sue your association. In other words, it's not enough for associations to set objectives, give members the tools to

meet those objectives, link rewards to meeting the objectives and give unhappy members a hearing. Associations need to realize hard feelings create a litigious environment and attempt to meet their objectives without suffering or causing a lot of unnecessary pain. Associations still need to cause necessary pain by letting the bad official know he's bad. However, associations don't need to create problems that aren't there. Don't just tell the bad official he's bad. Tell

*(See Modern Association page 7)*



## Handshake (Continued from page 1)

formal and specific contract is likely to exist with the schools or leagues.

Handshake deals are fine, but not the best way to protect the interests of the group and its members. They can lead to complaints about broken promises, claims of unfair treatment, and in the worst case, he said/she said litigation in court. If that happens, with the cost of legal services, even if you win, you lose.

Some examples of problems that can result from vague oral agreements or promises are obvious. Did the league promise to pay mileage from home or from the center of town? What's the fee for cancelled games? Normally, groups anticipate those kinds of issues and include them in their contracting documents.

With that in mind though, it's well to consider another phrase near and dear to first-year law students: "If you write at all, write it all." That's good advice for everyone. Don't leave things

to "that's the way we've always done it." Past practice may be an indication of an enforceable agreement, but it's not a slam-dunk proof wise.

For example, do you promise a minimum number of assignments to new members to help them recover

### Handshake deals are fine, but not the best way to protect the interests of the group and its members.

their costs in equipment? What if Ron Rookie says the president or assigning secretary did? Do you require members to attend a minimum number of meetings in order to get assignments? Are there any exceptions? What if Herb Heartburn says you let one of the good old boys work anyway and the rule

cost him \$1500 in fees? Do your contracts with your schools or leagues say anything about providing security or adequate changing facilities?

That doesn't mean you have to find an attorney in your group and ask him to draft long boilerplate contracts that no one reads anyway. Use common sense and put things in writing. Include in particular those practices that have become part of the understood way you conduct your business. Let your members and schools know what they can expect from you and what you expect from them. If you do that, you'll avoid problems down the road and not have to worry about how much that oral contract is worth.

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## Modern Association (Continued from page 1)

him where his deficiencies are and what he can do to improve. To do otherwise simply lets the bad official build up resentment that isn't needed.

Here are a few organizational tips to create an educational climate:

- First, educate your new members. Create a climate of education for on- and off-the-court issues. It doesn't benefit you to simply tell an official he or she is an independent contractor. You need to explain what an employee is, what an independent contractor is and why you consider the individual to be an independent contractor. Explain to your members that association bylaws are binding contracts and their independent contractor rights don't extend to breaching bylaws or any other contracts. However, also be sure to tell your officials why certain bylaw clauses exist.

You can and should tell your members why they get the games they

get. Tell them the standards, who is watching and evaluating and if they got a good game on a Friday night because there were too many games and your association couldn't service them all. However, let the official know he or she will get a legitimate evaluation that might result in him or her seeing more of those high level games in the future. Sometimes, the national shortage of officials can work to an individual official's benefit.

- Two, link your association's rewards to some system designed to assess merit. Don't make your members think rewards are linked merely to one or two people's preferences.

- Three, make sure the system doesn't make one single person the bad guy. If you're evaluating, for example, you want multiple sources of evaluations. Now an association can tell a member he or she is the worst official according to the official's partners, the

neutral observers, the coaches and the assigner. There's no single bad guy.

- Fourth, make sure the system has some group of people who can be good guys. Someone has to be a buddy or mentor. That person should be isolated from any possibility of being a bad guy. Thus, the mentor should advise and guide, not evaluate.

- Fifth, create a system in which no single person accrues unchecked power. You don't need to get the association sued just because one person has ticked another person off. Those steps will create a climate that will help you stay out of legal trouble.

Next month is the final installment of the modern association management series covering how associations professionally handle assigning and assigning policies for its members. *(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.)* □