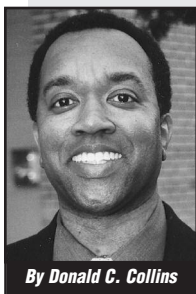


## Your Rights and Responsibilities

# Gender Based Discrimination

**NASO members who have questions concerning situations pertaining to their officiating now have access to the Member Information and Consultation Program (MICP). MICP provides members with articles or information on specific topics. NASO can also put members in touch with an expert to discuss officiating-related information up to three times a year through MICP.**



By Donald C. Collins

**Q:** I am the president for my local officials association. Our group's assigner told a female referee member of the association that she was not being assigned any boys' games because the coaches don't want women officiating their games. The female referee has threatened to sue. Does our female member have a case?

**A:** The association assigner has clearly violated the female official's civil rights. The association has denied the

official rights protected under Title VII (42 U.S.C. § 2000e et. seq.), which precludes gender-based employment discrimination. It's possible that a court will find the association isn't an employer — the officials could be independent contractors or the association may not meet the Title VII threshold of having 15 employees working 20 weeks. It doesn't matter. Title VII applies to employment agencies; officials associations cannot escape the fact that they act like employment agencies.

It gets worse. The association is probably going to be subject to a legal piling on as it has probably violated state civil rights laws and breached the regulations of the sports governing body.

The association can probably avoid a lawsuit by fixing things. All it has to do is begin evaluating its members, linking assignments to evaluations and providing members due process rights to challenge evaluations they object to. Most officials want to spend their time on the court — not in court. It is likely that doing things the right way — combined with some ameliorative acts toward the offended female official — will suffice.

If the association doesn't fix things, a wave of ugly things could occur. The acts of an officials association will likely involve the schools the association serves, and it could involve the state governing body.

It is possible that the state governing body is not fully aware of the scope of discrimination — but it probably doesn't matter; just as it wouldn't matter if the CEO of an accounting firm didn't know that the mail room clerk groped his female employees and the mailroom supervisor didn't put a stop to it. The state governing body can be liable for a local association's discriminatory conduct. Local associations are, in some instances, the agents of a state governing body because most state governing bodies regulate officials or associations, sanction the associations to conduct training, and link playoff assignments from the governing body to performance

in regular season games assigned by the association.

The fact that the state governing body could be liable opens up a whole new world of liability. Title IX claims could enter the picture. Economic damages could become substantial as state governing bodies have a financial capacity that vastly exceeds the capacity of an officials association.

We are fortunate in that we don't need to speculate here. This runaway train of liability is exactly what occurred in *Kemether v. Pennsylvania Interscholastic Athletic Association (PIAA)*, 15 F. Supp. 2d 740 (E.D. Pa. 1998). In the *Kemether* case, the PIAA was found liable for a local officials association's discrimination against a female official; the association refused to assign the female official to boys' basketball games. As I mentioned earlier, in sports we are all linked. In the *Kemether* case, they were all linked to the tune of \$314,000.

There is a religious exception to employment discrimination laws. However, the religious exception does not apply when the religious entity engages in a non-religious activity against other schools, clubs, teams, etc. ... The Kansas school that refused to let a female official work a boys' high school basketball game in the 2007-08 season was out of line. It is important to note, though, that the school would have been OK if it were running an in-house church league open only to church members.

Eventually, state governing bodies may exert more control over officials as officials can cost them money.

*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 is intended for informational purposes and is not legal advice. □*

*Is there a topic you or anyone else in your association would like to share? ONBoard would like to interview you. Send your ideas to editor@NASO-ON.org.*



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