

LAW

ISSUES AFFECTING OFFICIALS

Use Uncertified Officials and You Might Risk It All

By Donald C. Collins

Assigners who use uncertified officials incur contractual risks. In states that certify officials, the assigner has either expressly contracted to assign certified officials or has an implied duty of good faith to provide them.

A school or a league that is not aware that an assigner is using uncertified officials would probably be able to void the contract and hire a rival assigner or association if the assigner couldn't meet a demand to begin providing certified officials. The unaware schools or leagues may also be able to avoid or reduce assigner fee payments. But the school or league would have to pay the officials who worked its games, even if it didn't know the officials were uncertified.

While there are states that bar certain types of unlicensed contractors from enforcing contracts, the certification of officials is not

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generally governed by a state statute, so any state bars on unlicensed contractors would not apply.

A school or league that is not aware that an assigner is using uncertified officials can sue the assigner for restitution of any economic penalties it incurs for using an uncertified official. Unfortunately, it is not clear what a school could do in a state that forfeited contests where the home team hires an uncertified official. A contractor can be forced to pay for economic losses caused by a breach of contract, but the economic

harm caused by forfeits is a speculative future harm that can't be easily measured.

The non-contract risks are the more dangerous to the assigner. There's a wide array of risks that could occur when an assigner uses officials who are not cloaked with the state governing body's authority.

Uncertified officials are not formally screened — even if the assigner screens them himself. Uncertified officials' training is not authenticated even if the officials are very good. No matter what the assigner does, he or she can never be certain that his or her officials truly meet all the standards of a certified official. Also, the assigner can't point his or her finger at a certifying entity when things go wrong.

All of those risks can increase the assigner's chances of being liable for negligence in assigning. Failing to use certified officials gives plaintiffs one more point to raise in lawsuits based on failure to control the game or failure to properly inspect facilities. The lack of certification may even have insurance ramifications like increased rates or a denial of claims.

The assigner and the uncertified officials have a fighting chance to defend lawsuits based on non-contractual matters. They won't lose the suits just because the official wasn't certified, or violated a state statute. Officials' certification requirements are not statutes.

Uncertified officials are used frequently. Officials need to bring issues to state associations to better distinguish between the outlaw assigner and an uncertified official used in a special circumstance.

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

Guidelines to Defending Officials

Defending officials involves investigation, communication and, at times, discipline. How do you preserve the integrity of the association when one of its officials is under fire?

- Be aware of contractual relationships with conferences, leagues and schools. Know the terms and any restrictions.
- For groups that assign games and utilize a rating system, make sure the criteria are clearly stated.
- Is your officials association a chapter of a parent association? If so, be familiar with its rules, regulations and bylaws and the impact on complaints. Same with the state association.
- Make sure your corporate charter contains information about the rights and responsibilities of members.
- Have insurance coverage in case a complaint turns into a legal proceeding.
- Consult local law, preferably with the aid of your association's counsel.
- Understand that your association is authorized to handle complaints related only to specific issues.

Avoid Risks From Time of Arrival to Departure

Actions before and after a game determine how well you manage risk.

Officials who consistently enforce safety rules before the game and maintain a professional demeanor and avoid careless talk afterward manage risk effectively. Officials who show concern for safety are less likely to have decisions challenged, whether it's on the field or in the courthouse.

From the moment you walk into a school, assume your role as an official. Conversation is polite but guarded. Professionalism is the goal from the time you arrive until the time you depart, so constantly be aware of your demeanor, actions and speech.

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