

Your Rights and Responsibilities

Disclose Official's Lack of Skill?

By Donald C. Collins

Q: If a referee has performance issues relating to judgment and safety that an association knows about, should that be disclosed to another association? Is it the duty of leadership to alert others? Or is that unfair to the official?

A: Negative references create a catch 22. On the one hand, the official's new association has an economic incentive to check references both as a matter of due diligence and to avoid negligent assignment lawsuits.

On the other hand, the official's former association has an economic incentive to avoid giving a negative reference so it won't face a defamation lawsuit. Organizations can achieve that by giving no reference or by giving name, rank and serial number information such as, "Joe worked here for five years."

If everybody pursued their economic incentive, I would ask, and you wouldn't answer; and if you asked me, I wouldn't tell you. That is a problem. Fortunately, there are some solutions.

As a matter of law, an association can give a negative reference. Organizations have a qualified privilege in law to give negative references. Organizations lose that privilege if they knowingly present false information or excessively disclose it.

The law is not enough. Many former employers know they have a qualified privilege, and still hesitate to give a negative reference. Even with a qualified privilege, a former employer will have to pay to defend a defamation lawsuit.

The law must combine with good insurance. An association should consult local counsel to see if its state provides a qualified privilege. The group must then check with its insurer to see if employment-related lawsuits are covered. If so, there's an ethical duty to give a negative reference.

Once the decision is made to give a negative reference, the association has to make sure that it sticks with the facts, and does not stray into the realm of opinion. Associations can do that by giving the level of play the official worked — or was rated to work. The association can also provide information on documented membership-related issues such as missed meetings. The

member information [micp] consultation program

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association can also provide information on documented patterns of officiating that impacted an official's evaluation.

An association should not give conclusions. For example, it is a fact to say that an official was evaluated as being only a freshman level official, who had trouble with play above the rim. You can put that in a negative reference. It is a conclusion to say that an official was unsafe to put on a varsity game or was a risk to the players. The fact that one rated an official poorly is not tantamount to a conclusion on safety.

Associations should not cop out — trying to find a way to make everybody look good. Associations have no legal obligation to provide a reference. However, once an association gives one, it must be honest. Calling a bad official a good official is not honest, and can lead to lawsuits from the official's new association should they rely on the dishonest reference.

Finally, associations should not hunt down an official's new association and tell them that an official is bad. Respond only to requests for a reference, and remember that it is possible for one association to hold a higher opinion of an official than another, and that an official may improve over time.

Ultimately, this matter boils down to speaking with local counsel about the law, checking your insurance, being honest and factual, and not being overzealous.

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