ASSIGNING SHORTAGE LIABILITY

By Donald C. Collins

Q The shortage of sports officials has resulted in assigners using some officials with less experience on bigger games. Does that open the assigner up to liability if an injury occurs because of a perceived officiating error or a fight occurs because of perceived lack of officiating game management?

A Assigners and associations can be liable for negligent assigning. They can also be liable for breaching contracts.

It is important to note the mere act of assigning an official with less experience on big games or breaking in an official at a level of play is not a basis of liability. Also, perceptions that one set of officials are not as good as others is not a basis of liability. Coaches, players and even spectators may pine for the officials they're used to seeing, but an assigner does not become liable simply because he or she didn't assign the veterans.

We assign and officiate to a standard.

The assigner must have knowledge the officials know the rules, can exercise reasonable judgment in applying them, have sufficient skill to exercise that judgment at the level they're being asked to officiate, and understand how to implement a broad array of safety procedures and administrative functions.

The assigner must also know whether the official meets any licensing requirements. Those requirements could range from a state high school governing body's registration/certification requirement, to passing the test required at certain levels of play, to meeting the three-step Safe Sport requirement of a national governing body.

An assigner can assign an official who hasn't worked at a level before, and an assigner can assign an official who hasn't worked specific big games before as long as the official meets the standard. Indeed, an assigner who failed to periodically do this would create a legal problem. They would be forced to keep using the same officials over and over, and eventually they'd use one of those officials past the point where that official met the standard. Assigners must remember that past performance does not guarantee current ability; it is essential that assigners have knowledge of the ability of the officials they assign.

Of course, an assigner could still negligently assign a new or veteran official who fails to meet the standard. Doing so triggers two distinct legal problems.

The first problem is a potential negligence problem. This problem occurs where a player is harmed by an official's negligence. We would tend to see this in situations such as a player slipping on a wet court, or remaining in a game in violation of the concussion rule. It is important to note that, as in all negligence cases, the official's negligent act must be accompanied by harm in order for the official to be liable, and the assigner to possibly be liable for making a negligent assignment.

The second problem is a contract problem. An assigner who knows he or she is assigning an official who doesn't meet the standard is breaching a contract with the league or team that contracts with the assigner even if the contract makes no mention of the officials meeting the standard.

All contracts have inherent preconditions, and an assigner's precondition is he or she is assigning officials who meet the standards to work the contest. If the standards are set out in the contract or in governing body bylaws, then the breach is clear. Where the standards aren't set out, the contract would still be voidable due to either fraud, misrepresentation, or a breach of an implied warranty to provide officials who meet the standard. A client school, team or league can void out their contract in such cases, and may even be able to pass on the costs of finding their replacement to the assigner or association that sent the officials who didn't meet the standard.

In most cases, assigners aren't acting maliciously. We have severe officiating shortages in most sports. The assigner who sends officials who don't meet the standard is likely choosing expediency. But sending unqualified officials is too risky. Better to simply put rescheduling clauses in the contract and use a negotiated time frame for letting the client know the game has to be rescheduled due to a lack of officials. One does not need to be a lawyer to know that honesty, combined with standards, is still the best policy.

Donald C. Collins is a longtime basketball official and lawyer from San Francisco. This article is for informational purposes and is not legal advice.