

Show Biz Biz:

Contracts and the Child Performer

Understanding the "Coogan Law"

by Neil A. Burstein, Esquire



Under general rules of contract law, an agreement between two parties is normally binding and each party is lawfully required to honor the promises and obligations set forth in the contract. An exception to this rule of law occurs when one of the parties to the contract is a minor. To protect the best interests and welfare of children, the law deems minors incapable of possessing the necessary judgment and capacity to be legally bound by their agreements. As a result, a contract with a minor is voidable at the election of the child. For example, in the case of *Lee v. Silver*, a child vocalist and her mother signed a written contract engaging a business manager for a period of three years. Shortly thereafter, the child vocalist repudiated the agreement and the manager sued to enforce the contract. The court ruled that the child vocalist had the absolute right to rescind and repudiate the agreement on the grounds of infancy. The business manager's claim against the mother for inducing her daughter to repudiate the contract was also dismissed. The court concluded that parents have an absolute right to advise their children on all matters, including advice given to disaffirm a contract.

In general, a minor may disaffirm his or her contract obligations at any time during infancy or within a reasonable time after the child reaches the age of majority. On the other hand, the adult party to the agreement cannot avoid the obligations of the contract should the minor seek to enforce it. The age of majority is determined by state law. In New York and California, a person is deemed an "infant" or "minor" until the age of 18.

The financial risks and uncertainties of dealing with minors without the assurances of a binding contract was especially troublesome to employers in the entertainment business. In particular, the business practices of the entertainment industry require enormous investments to produce

most entertainment productions. Financial investments, careers, and reputations are often at risk on each project. In this atmosphere of high risk and huge investments, entertainment companies were often reluctant to hire minors, since there was no legal assurance that the contracted services would actually be provided by the child performer. For example, if a production company hired a minor to perform in a television series, the child performer could disaffirm the contract and leave the series mid-season without incurring any legal penalties. Typically, this might occur if the performer received a more lucrative offer elsewhere. Understandably, the uncertainties of dealing with minors tended to discourage employment opportunities in the high risk/high investment business environment of the entertainment industry.

In recognition of the special problems faced by entertainment companies in hiring minors, various states enacted laws establishing procedures for court approval of agreements employing minors in the entertainment business. The primary purpose of such legislation was to provide a degree of certainty for parties contracting with minors in the entertainment industry by eliminating the minor's common law right to disaffirm contracts. Thus, a contract approved by the court becomes binding on the child and cannot be disaffirmed on the grounds of infancy. In exchange for the loss of the child's right to disaffirm, certain minimum requirements must be established before a contract will be judicially approved.

In general, a court will not approve a contract employing a child in the entertainment business unless the terms are reasonable and in the best interests of the child. To ensure that the terms are reasonable, most states (including New York and California) require that a copy of the employment contract be attached to the court papers seeking judicial approval of the contract. There will also usually be a requirement that a portion of the net earnings under the contract be held in trust for the benefit of the minor. This provision is commonly referred to as the "Coogan Law," named after the child star of silent pictures, Jackie Coogan. Despite having made vast sums of money as a child, Coogan discovered that his financial gain had been depleted by the time he reached adulthood. To prevent this occurrence, each state which has a "Coogan Law" will set guidelines whereby a judge has discretion to set aside a portion of the contract earnings in a blocked trust which cannot be withdrawn until the child reaches adulthood. To implement the law, it is necessary to file a court petition for approval of the contract. A court petition may be commenced by the employer, parent, guardian, or relative acting on the child's behalf. As a practical matter, it will usually be the employer who seeks judicial approval, thereby obtaining the benefits of a binding contract. Typically, only a small percentage of contracts are submitted for court approval due to the time required for court appearances and the legal expense incurred in petitioning the court.

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Both New York and California have enacted legislation establishing procedures for court review and approval of contracts with minors rendering services in the entertainment business. In New York, the Arts and Cultural Affairs Law provides that judicial approval may be obtained for contracts with minors who are "performing artists," such as actors, dancers, musicians, or vocalists. Similarly, the Civil Code of California provides for judicial approval of contracts with minors employed to render "artistic or creative services." Under both statutes, court approval will frequently be conditioned upon a setting aside of a specified percentage of the minor's net earnings under the contract, to be held in trust for the minor's benefit. The amount held in trust is determined by the judge on a case to case basis, but the amount can't exceed 1/2 of the net earnings under the contract. In determining the specific amount to be set aside, consideration is given by the judge to the financial circumstances of the parent, the other family members, and the needs of the infant performer.

There are also several significant differences in the New York and California laws regarding court approval of contracts. Under the New York statute, a contract can't receive court approval if the term of the agreement, including any extensions by option or otherwise, extends for a period of more than three years. This means that the child performer can't be required to work more than a total of three years pursuant to the contract. For example, a contract which includes a two-year option for extension beyond the three-year contract period does not qualify for advance judicial approval since it may require the minor to work for more than three years. However, certain contract terms not relating to the duration of the child's services may extend beyond three years if the court deems such provisions reasonable.

For example, the court may grant the producer the perpetual right to use the child's likeness in advertising relating to the production. California law allows court approval of contracts for periods up to seven years. As a result, producers generally seek to file petitions for court approval under California law where the child performer can be contractually bound for the longer seven-year period. In New York, court approval of the contract may be revoked or modified at any time upon a finding that the well-being of the child is being impaired. There is no similar statutory provision covering revocation of court approval in California.

Of special interest to parents or guardians is the question of parental liability for their children's contracts. Most entertainment company contracts require that the parent or guardian sign the contract as a guarantor of the child's performance. As a result, parents who sign in this capacity are potentially liable for monetary damages in the event of nonperformance by the child performer. To provide a measure

of protection to parents and guardians, New York enacted legislation providing that a parent or guardian is not liable as a guarantor of a minor's contract unless the agreement was previously approved by the court and the parent or guardian signed the contract either as a party or guarantor. This means that unless a contract has received court approval, a parent is not liable as a guarantor even if the parent signed in that capacity. In California, there is no specific statutory provision covering parental liability. Thus, parents or guardians who sign as guarantors do so at their peril in California.

To protect the best interest of the minor, I would urge parents and guardians to contact an attorney before signing any contracts or permitting their children to sign. Parents should be mindful that not every contract is subject to the common law right of disaffirmance by the child. As noted previously, a contract approved by the court is not subject to disaffirmance on the grounds of infancy. Certain con-

THE ARTIST MAY NOT WAIVE ANY PROVISION OF THIS CONTRACT
WITHOUT THE WRITTEN CONSENT OF SCREEN ACTORS GUILD, INC.

SCREEN ACTORS GUILD
MINIMUM FREE LANCE WEEKLY CONTRACT
FOR TELEVISION MOTION PICTURES OR VIDEOTAPES
Continuous Employment—Weekly Basis—Weekly Salary
One Week Minimum Employment

THIS AGREEMENT made this _____ day of _____, 19____, between _____, a corporation, hereinafter called "Producer," and _____, hereinafter called "Player".

WITNESSETH:

1. Photoplay; Role and Guarantee. Producer hereby engages Player to render services as such, in the role of _____ in a photoplay produced primarily for exhibition over free television, the working title of which is now _____ Player accepts such engagement upon the terms herein specified. Producer guarantees that it will furnish Player not less than _____ weeks employment. (If this blank is not filled in, the guarantee shall be one week).
2. Salary. The Producer will pay to the Player, and the Player agrees to accept weekly (and pro rata for each additional day beyond guaranteed) the following salary rate: \$_____ per "studio week". (Schedule B Players must receive an additional overtime payment of four (4) hours at straight time rate for each over-night location Saturday).
3. Producer shall have the unlimited right throughout the world to telecast the film and exhibit the film theatrically and in supplemental markets, in accordance with the terms and conditions of the Screen Actors Guild 1985 Television Agreement (herein referred to as the "Television Agreement").
4. If the motion picture is rerun on television in the United States or Canada and contains any of the results and proceeds of the Player's services, the Player will be paid the additional compensation prescribed therefor by the Television Agreement unless there is an agreement to pay an amount in excess thereof as follows: _____
5. If there is foreign telecasting of the motion picture as defined in the Television Agreement, and such motion picture contains any of the results and proceeds of the Player's services, the Player will be paid \$_____ plus pro rata thereof for each day of employment in excess of one week, or if this blank is not filled in, then the Player will be paid the minimum additional compensation prescribed therefor by the Television Agreement.
6. If the motion picture is exhibited theatrically anywhere in the world and contains any of the results and proceeds of the Player's services, the Player will be paid the minimum additional compensation prescribed therefor by the Television Agreement.
7. If the motion picture is exhibited in supplemental markets anywhere in the world and contains any of the results and proceeds of the Player's services, then Player will be paid the supplemental market fees prescribed by the applicable provisions of the Television Agreement.
8. Term. The term of employment hereunder shall begin on _____ on or about _____ and shall continue thereafter until the completion of the photography and recollection of said role(s).
9. Incorporation of Television Agreement. The applicable provisions of the Television Agreement are incorporated herein by reference. Player's employment shall include performance in non-commercial openings, closings, bridges, etc.; and no added compensation shall be payable to Player so long as such are used in the role(s) and episode(s) covered hereunder and in which Player appears; for other use, Player shall be paid the added minimum compensation, if any, required under the provisions of the Screen Actors Guild agreements with Producer. Player's employment shall be upon the terms, conditions and exceptions of said provisions applicable to the rate of salary and guarantee specified in Paragraphs 1 and 2 hereof.

tracts which provide necessities to children (i.e., food or clothing) are also not subject to repudiation. In addition, there are other situations in which a contract can't be revoked by a minor. For example, a written consent executed by a parent on behalf of a child model is not subject to the common law right of a child to disaffirm. This was recently confirmed in the widely publicized case of *Shields v. Gross*, in which the court ruled that the parent's consent was binding on the child. In this case, the internationally known model and actress Brooke Shields sued to prevent a photographer from using nude photographs taken of the model when she was ten years old. At the time of the initial photography sessions, Brooke Shields' mother and legal guardian signed an unrestricted consent form granting the photographer permission to use the photographs "for any purpose whatsoever." In seeking to invalidate the contract, Brooke Shields argued that she has a common law right to disaffirm the consent given by her parent. However, the court ruled that Brooke Shields was bound by the terms of the unrestricted consent executed by her mother which she could not later disaffirm. Accordingly, the court refused to bar the photographer from using the nude photographs in legitimate publications.

Under similar circumstances, a photographic release was recently upheld under California law. In the case of *Faloona v. Hustler Magazine*, a mother had executed an unrestricted release for the use of certain nude photographs of her children, intended for use in a textbook on human sexuality, entitled *The Sex Atlas*. This release gave the publisher the right

to use the photographs "in any manner." Following publication of the textbook, *Hustler Magazine* purchased the right to publish a 5,000 word excerpt with accompanying photographs from the textbook. The mother sued on behalf of her children after *Hustler Magazine* published one of the nude photographs of the children. In addition to monetary damages, the lawsuit sought to void the photographic release. The plaintiffs argued that under California common law, minors had the right to repudiate contracts. The court disagreed, holding that photographic releases were not subject to disaffirmance by minors under California law.

A careful evaluation and analysis should be made by the child's parents or guardian before any contract is signed. The contract should be evaluated in light of the financial and educational needs of the minor, as well as whether it provides for the proper development of the minor's talents. Parents must also weigh the benefits and drawbacks of seeking court approval of the contract. I would also recommend that parents consult with an attorney with experience in entertainment law regarding all contractual matters.