

the Young Performer's GUIDE



How to Break into Show Business

Brian A. Paddol & Alan Simon
...and the Editors of **CallBack** Magazine
Foreword by Malcolm-Jamal Warner

DM: No, and I think my son is quite angry with me because I didn't do anything at all to help him or encourage him. He hasn't said so, but I think he would've liked me to try to do more. I couldn't have done anything even if I'd wanted to. I don't know anyone in casting. I have no contacts in that area anymore. Even if I did, I wouldn't have helped him, which may not be right. There are others who have benefited from having their parents in the business, but I simply didn't have that kind of clout.

AS: Would you do it all over again?

DM: Sure. I wouldn't want to be anybody else doing anything else in any other place. If in order to be here now I had to relive my past, then that's what I would do.



To avoid some of the pitfalls that happened to Dick Moore and the other child actors of his era, the family must know what to look for in a contract. Neil Burstein, an entertainment lawyer, offers some insight.

CONTRACTS AND THE CHILD PERFORMER

Neil A. Burstein, Esquire

In contract law, an agreement between two parties is generally binding, and each party is required to honor the terms of the contract. An exception occurs where 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 to be legally bound by their agreements. As a result, a contract with a minor can be voided by the child. A noteworthy example is the case of *Lee v. Silver*. A child vocalist and her mother signed a contract engaging a business manager for three years. Shortly thereafter, the child repudiated the agreement, and the manager sued to enforce the contract. The court ruled that the child had the absolute right to 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.

A minor may repudiate contract obligations at any time during infancy or within a reasonable time after reaching the

age of majority. 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 an "infant" or "minor" until age 18. The legal right of minors to disaffirm their agreements caused problems for employees in the entertainment industry.

Mounting most entertainment productions requires enormous investments, whether for movies, television, or stage production. In the past, the legal and financial risks inherent in employing minors without the assurances of binding contracts were especially troublesome to employers in the entertainment business. Entertainment companies were reluctant to hire minors, since there was no legal assurance that the contracted services would actually be provided by the child. For example, if a production company hired a minor to perform in a television series, the child performer could, upon receiving a better offer, repudiate the contract and leave the series mid-season without any legal penalty.

Court approval of contracts

Recognizing the special problems of the entertainment industry, states with significant entertainment business established procedures for court approval of personal service agreements with minors. The purpose of such legislation was to provide assurances to parties contracting with minors by eliminating the minor's common law right to annul contracts. Thus, a contract approved by the court is binding on the child and cannot be disaffirmed on the grounds of infancy or on the ground that the parent lacked authority to make the contract. However, certain minimum requirements must be established before a contract will be approved by the court.

A court will not approve a contract employing a child in the entertainment business unless the terms are reasonable and in the child's best interests. To ensure that the terms are reasonable, most states (including New York and California) require that a copy of the contract be attached to the court papers seeking judicial approval. There is also a requirement that a portion of the child's earnings be held in trust for the child. This provision is commonly called the "Coogan Law," after Jackie Coogan, the child star of silent pictures. Despite making vast sums of money as a child, Coogan found his money depleted upon reaching adulthood. To prevent such occur-

rences, "Coogan Laws" were enacted. Each state with a "Coogan Law" sets guidelines whereby a judge can set aside a portion of a minor's contract earnings, to be held in trust until the child reaches adulthood. To implement the law, a court petition must be filed seeking judicial approval of the contract. The court petition may be filed by the employer, parent, guardian or relative acting on the child's behalf. It is usually the employer who seeks court approval, since he gets the benefits of a binding contract. Only a small percentage of contracts are submitted for court approval due to the time required for court appearances and the expense involved.

New York and California law

Both New York and California have procedures for court approval of contracts with minors. In New York, the Arts and Cultural Affairs Law provides that judicial approval may be obtained for contracts with minors rendering services as "performing artists," such as actors, dancers, musicians, or vocalists. Court approval is also available for management and agency agreements with minors. 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 is frequently contingent on setting aside a percentage of the minor's earnings under the contract, to be held in trust until the child reaches majority. The amount held in trust is determined by the court, but no more than one-half of the minor's net earnings may be set aside. In determining the percentage set aside, the court considers the financial circumstances of the parent, other family members, and the needs of the child.

There are several significant differences in the New York and California laws. Under the New York statute, no contract will be approved if the term of the agreement, including any extensions, exceed three years. A contract which includes a two-year option to extend beyond the three-year contract period would not qualify for court approval. However, certain contract terms not relating to the duration of the child's services may extend beyond three years. For example, the court may grant a movie producer the perpetual right to use the child's likeness in advertising the movie.

California law allows court approval of contracts for up to seven years. Producers frequently file petitions for court ap-

proval under California law because of the longer contract period. In New York, court approval of the contract may be revoked or modified at any time if the well-being of the child is impaired. There is no similar provision for revocation of court approval in California.

Parental liability

Today, most entertainment industry contracts require the parent or guardian to sign as a guarantor of the child's performance. Parents who sign in this capacity are potentially liable for damages in the event of nonperformance by the child. To protect 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 received judicial approval, and the parent signed the contract either as a party or guarantor. This means that unless a contract received court approval, a parent is not liable as a guarantor even if the parent signed in that capacity. In California, there is no statutory provision covering parental liability, so parents who sign as guarantors do so at their own risk.

Exceptions to the right to disaffirm

Parents and guardians are urged to consult an attorney before signing contracts or permitting their children to do so. Parents should know that not every contract is subject to the common law right of disaffirmance by the child. A court approved contract is not subject to disaffirmance on the ground of infancy or on the ground that the parent lacked authority to make the contract. Certain contracts providing necessities to children (e.g., food or clothing) are not subject to repudiation. A contract is also enforceable if ratification occurs after the minor reaches majority. There are other situations in which a contract cannot be revoked. In *Shields v. Gross*, the court ruled that the parent's consent was binding on the child. In this case, internationally known model and actress, Brooke Shields, sued to prevent a photographer from using nude photographs taken of her when she was 10 years old. Brooke Shields' mother had signed an unrestricted consent form granting the photographer permission to use the photographs for "any purpose whatsoever." Shields argued that she had a common law right to disaffirm the consent given by her parent years ago. However, the court ruled that Shields was bound by the terms of the

unrestricted consent given by her mother. The court refused to bar the photographer from using the nude photographs in legitimate publications.

A photographic release was also upheld under California law. In *Faloon v. Hustler Magazine*, a mother had signed an unrestricted release for the use of nude photographs of her children, intended for use in a textbook on human sexuality. The release gave the photographer the right to use the photographs "in any manner." Following publication of the book, an adult magazine purchased the right to publish a 5,000 word excerpt with accompanying photos from the book. The mother sued on behalf of her children after the magazine published the nude photographs of her children. In addition to monetary damages, the lawsuit sought to void the photographic release, arguing that minors had the right to repudiate contracts. The court disagreed, holding that photographic releases were not subject to disaffirmance under California law.

Before signing a contract

The child's parent or guardian should carefully evaluate and analyze any contract before signing. The financial and educational needs of the child should be considered, as well as whether the contract provides for the proper development of the child's talents. In all contractual matters, parents should consult an attorney with experience in entertainment law.

Neil Burstein is an entertainment lawyer with offices in New York City. He is a section member of the Talent Agencies and Talent Management Committee of the New York State Bar Association, and author of numerous articles on entertainment law.

From "The Young Performer's Guide: How to Break into Show Business"
by Brian A. Padal and Alan Simon and the Editors of Callback Magazine.

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