CHILD ACTORS: *WHAT'S ALL THE FUSS?*

SEMINAR SPEAKERS

ANTHONY J. HANNA, Esquire

Anthony J. Hanna is a Member of PIERCE LAW GROUP LLP, a 6 attorney boutique entertainment law firm with an emphasis on providing labor and employment law counseling for independent film and television production companies. Prior to joining Pierce Law Group, Anthony worked for the Screen Actors Guild's Theatrical Contracts Department for seven and one-half years. During his time at SAG, Anthony worked on over 2,000 film productions and was widely recognized as one of SAG's foremost liaisons in rectifying issues between producers, the Guild and its members. Prior to SAG, Anthony practiced general civil litigation for over twelve years. Anthony is also active in civic and community affairs as a member of the Manhattan Beach Community Emergency Response Team (CERT).

Anthony is a member of the California Bar and the Beverly Hills Bar Association and is originally from Los Angeles, California. Tony works in the practice group areas of litigation, entertainment union issues, wage hour advice, OSHA safety, and labor & employment issues. Tony regularly takes the lead in overseeing child actor ratifications for Pierce Law Group's studio and production company clients, as well as those in the music industry. His extensive knowledge of SAG rules, DLSE regulations and OSHA safety requirements permits his law firm to assist clients in navigating the unique bureaucratic maze that can often surround the employment of minors in film & TV.

PAUL PETERSEN, Advocate

Paul Petersen is founder of "A Minor Consideration," a non-profit, tax-deductible foundation formed to give guidance and support to young performers, *Past, Present and Future*. Child Stars must pick their parents with care. Family Education is the key ingredient to a productive future. The members of AMC are always "on call" to assist parents and their professional children on a 'No Cost basis.' By providing a strong emphasis on education and character development, plus helping to preserve the money these children generate, the members of AMC are always available to help with the tricky Transition issues that for many kid stars prove to be so troubling.

Paul Petersen's passion for the welfare of children employed in the entertainment business started in 1977 with the publication of his 10th book, "Walt, Mickey & Me." His research into his own work history and that of his peers revealed some troubling commonalities that cried out for repair, not the least of which was, "Who owns the money?" The formation of "A Minor Consideration" in 1990 brought together several dozen former kid stars who shared Paul's high profile experience and, working together, inside the theatrical unions and the halls of legislatures across the country, Paul and his astounding group started to make those changes that today we accept as Custom and Practice.

"We will not be finished," he says, "until the rules for kids in show business are the same everywhere they are employed, just as the rules for animals are uniformly enforced worldwide." www.minorcon.org

(cont'd)

DAVID ALBERT PIERCE, Esquire

David Albert Pierce is Managing Member of PIERCE LAW GROUP LLP a 6 attorney boutique entertainment law firm law with an emphasis on providing labor and employment law counseling for independent film and television production companies. David regularly advises Lionsgate Film and Lionsgate Television on the unique labor issues confronting the employment of minors and has worked on such films as "*Madea's Big Happy Family*," "*Good Luck Chuck*" "*Akellah & The Bee*" and television shows such as "*Weeds*," "*Nurse Jackie*," "*Mad Men*" and "*Meet The Browns*" to name just a few. David has similarly provided such counseling to Starz!/Encore, Film Roman, Cartoon Network, Morgan Creek Productions and Nu Image, among others.

David earned his *Juris Doctorate* degree from Cornell Law School with a concentration in Business Law & Regulation. He is a frequent lecturer on the legal issues confronting the entertainment industry. For the past 13 years he has taught a course at UCLA Extension entitled "Organizing, Financing and Running A Start-Up Entertainment Production Company." For the past 8 years he has given an annual lecture on "Clearance Issues In TV" to the Academy of Television Arts & Sciences during their Visiting Professors Program. And most recently in 2011 he has begun teaching as an Adjunct Professor for a graduate level course at Loyola Marymount University's School of Film & Television entitled "The Business of Screenwriting." David is also a regular columnist for MovieMaker Magazine and is the author of several entertainment law articles.

BRUCE D. SIRES, Esquire

Bruce D. Sires is a partner of Valensi Rose, PLC in Century City. Bruce is a multi-level professional with degrees in general law and in taxation law. This uniquely qualifies him to understand and practice in the area of Tax and Wealth Planning, as well as unique issues concerning the operations of Coogan Trusts in the entertainment industry. Bruce works extensively with high net-worth individuals and families. He is very adept at planning and resolving disputes within his practice areas. His easy-going, confident, trusting style has gained him a solid list of long-time clients.

His 35 years of experience and background qualified him to be named a "Super Lawyer" among Southern California lawyers for 2004 - 2006 and 2009 - 2010 by Law and Politics Magazine and the publishers of Los Angeles Magazine.

He has spoken frequently and has written numerous articles on legitimate and lawful estate planning, as well as on the creative solutions to planning scams and botched administration of wealth management. In addition, he has been an Adjunct Professor of Law, Income Taxation of Trusts and Estates, at the University of San Diego School of Law. Bruce is also a certified specialist in estate planning, trust and probate law.

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CHILD ACTORS: WHAT'S ALL THE FUSS?

Topic Outline:

1. Calif. DLSE Regulations governing Child Actors & Working Conditions
   --Age matters
   --Work Hours
   --Working Conditions (Health, Safety & Morales of the Child)

2. SAG/AFTRA Rules governing Child Actors & Working Conditions
   --Déjà vu

3. Studio Teacher (more aptly "Studio Social Workers")
   --Role/Responsibility
   --Who Qualifies/How locate
   --Producers hire Studio Social Worker but Social Worker is mandated to stop Producers from engaging --in dangerous behavior—A real Twilight Zone situation
   --Morals in Hollywood? Drawing the ethical/legal line.

4. Coogan Laws/Coogan Trusts
   --The Rule & Its Rationale
   --Is Gross or Net Income Affected and what are legitimate deductions/exclusions?
   --The Effect of Loan-Out Corps on the Rule
   --Ethical obligations

5. Agents, Personal Managers, Business Managers, Lawyers
   --Ability to Take Fees and a percentage of what amount?
   --Who is the client:
   -- When Child's Interests and Parent's Interests Differ-- the ethical obligations of the "child's attorney"
   --Ratifying Representative's contracts with child performers
   --Ethical obligations to advise production companies regarding regulations.

6. Court Ratification Process
   --The Ratification Process
   --The importance of finding a "California nexus"
   --I ratify because it's the morally right thing to do to protect the Child Act
   --I ratify because the bottom line is its in the Producer's best interest for the economic security of the film.

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MINOR Contracts, MAJOR Headaches

"I like children... if they're properly cooked."

—W.C. Fields

(who, not coincidentally, also first uttered the widely repeated caveat "Never work with children or animals.")

THE HEADACHE SYMPTOMS

YOU'VE JUST COMPLETED a film starring several young high school-aged actors and one adorable five-year-old girl who steals every scene she's in. Festival audiences love it and now major distributors are in a bidding war to obtain it for a wide theatrical release. There is even some talk that the 16-year-old star of your film is being considered to play opposite Tom Hanks for a future summer blockbuster. Life is good—but then you receive the call...

The attorney for the 16-year-old star is on the line. After some small pleasantries about how much he enjoyed the film and compliments about the hors d'oeuvres at the Sundance after-party, he states, "It's time to renegotiate our young star's contract." You think he's joking and ask, 'What are you talking about? He signed his contract on the very first day of shooting.' The lawyer explains, "It is the young star's right to renegotiate because he's a minor and the law in all 50 states provides that any minor under 18 years of age has the right to elect to disaffirm any contract the minor has previously entered into with complete legal impunity."

You are stunned. But with the assurance of that one pre-law course you took as an undergrad, you reply, 'Look, I've got a fully executed contract. Not only did the kid sign it, but both of his parents as well!' The lawyer simply laughs and says, "He needs an

Article written by David Albert Pierce
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extra $50,000 from the first dollar paid by any distributor and 20 percent of the profits on top of that or we go into court for an injunction against distribution."

'You can't do this,' you scream. 'His contract says we have the right to use his likeness and if a dispute arises injunctive relief is *not* available. It's in the contract!' The lawyer replies, "You mean the contract that we just disaffirmed and rendered void? None of those terms matter anymore. The contract can't be enforced, it's worthless!"

'If we do a new contract what's to stop you from disaffirming that deal, too?' you ask.

"Why don't you get yourself a lawyer who knows about these things, and in the meantime start getting my client's money together," the lawyer replies.

As you hang up the phone, your assistant tells you there are messages from the attorneys and agents for the adorable five-year-old actress and a number of the other teenaged supporting actors in your movie. Your head begins to pulsate. Before heading to the nearest drug store and then for a massage at the Peninsula Hotel, you make an appointment with an entertainment attorney well schooled in child labor issues.

DIAGNOSING THE HEADACHE

UPON OBTAINING COUNSEL from such an attorney, you unfortunately learn that *everything the child actor's attorney said is true*! You also learn some legal lessons about employing children in the entertainment industry.

Under general common law principles, a minor (anyone under the age of 18) has the right at his or her election to disaffirm (i.e., void or disavow) any contract into which he or she has entered. This rule is a one-way street: Only the child can void the contract. If the child likes the contract, he or she is free to adhere to it and the opposing party is bound and cannot void it (unless, of course, the opposing party is also a child).

In certain situations, a parent or guardian executing an agreement on his or her child's behalf, wherein he or she assumes the obligations of the child, can avoid the adverse effects of a minor disaffirming his contract, as in the case of a car being purchased in the child's name with a parent serving as a guarantor and co-owner. However, this approach for avoiding a disaffirmation cannot work for all types of contracts. It cannot work where the child is to be bound in such a unique way that the parent could not step in and equally perform hereunder. No producer would consider the father of a 12-year-old boy standing in for his son a satisfactory alternative to the boy walking off the set, for example.

In addition, even if a parent or guardian *could* contract on behalf of a child, the entertainment industry has long recognized that "stage parents" cannot be trusted, so their signature on a child actor's contract should be considered meaningless. Over the years, the entertainment industry has witnessed countless abuses by stage parents who have not always acted in the best interest of their children. Thus, certain states such as California, New York and Florida have developed laws (commonly known as "Coogan Law") designed to protect child actors. These states have placed incentives for producers to assist in enforcing these protections, lest the producer run the risk of the child declaring his or her contract void.

Most moviemakers have heard of the Coogan Law, named after child actor Jackie Coogan (who later went on to play Uncle

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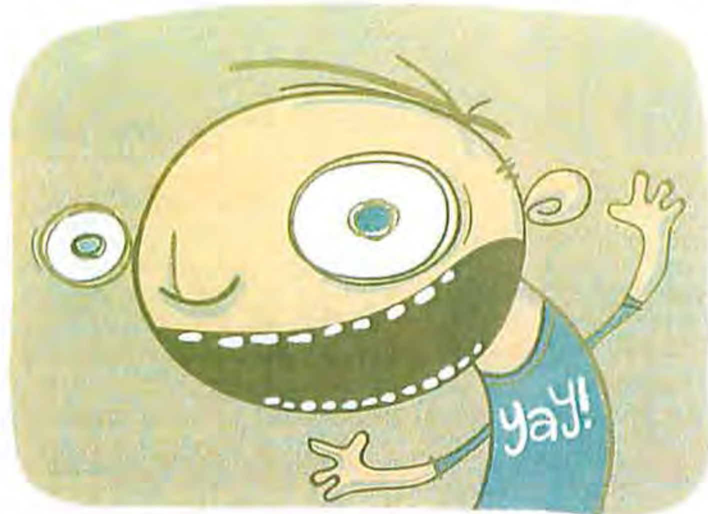
Fester on "The Addams Family"), who saw his child star fortune squandered by his parents. Enacted in 1939 to ensure that child actors receive at least a portion of their earnings when they reach the age of 18, Coogan Laws require a child actor's earnings to be paid directly into a special trust, or a Coogan Trust Account. However, most moviemakers do not realize that, aside from helping the child by setting up a segregated trust account, Coogan Laws provide a mechanism by which producers can achieve court ratification of the minor's contract. Even those moviemakers who are aware of the court ratification provisions are often not aware of the actual benefits those provisions provide to producers. Rather, there is a misconception that the entire process is merely for the good of the child and that producers who follow those rules are merely helping the child actor out without any real benefit to the production company itself. The reality, however, is that the Coogan Laws are also a giant benefit to producers, as once the producer obtains court ratification, a minor's contract can never be disaffirmed and the headache described in the beginning of this article can never arise!



BECAUSE OF EXTRA COMPLIANCE factors, use of children in films should be viewed as a luxury, much like elaborate stunts or big-ticket special effects.

The court ratification process consists of filing numerous court documents, such as declarations swearing that the child has been treated respectfully. Upon meeting all of the ratification requirements, a state court judge issues an official order holding that the contract is fair and all Coogan Law safeguards designed to protect the child (such as withholding a portion of his or her payments in a trust account) have been properly adopted by the producer. The court then rewards the producer for complying with these safeguards by declaring that the child's contract is officially "ratified," and the ratified contract can thereafter *never be voided* by the child.

In the example presented at the start of this article, the producer would be at the mercy of the child star's attorney. The producer failed to obtain court ratification of the child actor's agreement, therefore the child star is within his rights to declare the existing contract with the producer void and prevent the producer from exhibiting the film. If the producer attempts to go to court and argue, 'But we got the parents to sign!' the court will tell the producer, "But we told you not to trust the parents; only the court can make the child's contract binding. You failed to follow the law, so you cannot come to court *now*, cry about it and expect us to help you." Of course, the court might permit you to try to recoup the salary you paid the child under the voided contract. But that will do little to help your investors obtain a return on their investment or make up for your lost profits from being incapable of exhibiting the film.

THE PRESCRIPTION & CURE

ALL TOO OFTEN, novice moviemakers fail to appreciate the additional levels of responsibility and cost associated with lawfully employing child actors. Because of these extra compliance factors, use of children in films should be viewed as a luxury, much like elaborate stunts or big-ticket special effects. If you have a very limited budget, you need to ask yourself whether you really have enough funding to incorporate children into the film while lawfully complying with all of the red tape associated with having children on your set.

As a responsible moviemaker it is your duty and legal obligation to make sure that all child labor laws and child safety laws are strictly followed. Your responsibilities include, but are not limited to 1) special work hour restrictions; 2) obtaining work permits for the employment of minors; 3) ensuring the child is not subjected to dangers to his or her health and safety, either on- or off-camera; 4) ensuring that the child is not subjected to dangers to his or her "moral well-being," either on- and off-camera; 5) educational requirements; 6) ensuring employment of a "studio teacher" (a misnomer, because the individual must be employed whether school is in session or not and has responsibilities far beyond mere teaching); 7) special payroll obligations to withhold a set sum for the child's Coogan Trust Account; and 8) court ratification of the minor's contract to prevent the threat of disaffirmation. Complying with all of these assorted laws, regulations and responsibilities will add real costs to your budget.

If you *do* use child actors, take the time to learn what each of the above special responsibilities requires of you in order to lawfully and safely employ them. As a producer, you need only know that these matters need to be attended to in a timely fashion; you do not need to perform the actual work yourself. No one expects the producer of a film to draft or file the assorted court notices, petitions and declarations necessary for ratifying a minor's contracts. Likewise, experts can guide you in obtaining work permits, hiring a studio teacher and complying with permissible work hours and other restrictions affecting minors on film sets.

Remember, the court ratification process protects producers by assuring that a child actor cannot later disavow his or her contract. Therefore, regardless of where your film location may be, a smart moviemaker will look for a logical connection to one of the states that has an established process to obtain ratification and corresponding peace of mind (California provides the widest latitude for invoking its jurisdiction).

Budget accordingly for the assorted court costs and attorney fees associated with child actor ratifications (roughly $1,500 to $2,500 per kid), and make sure the ratifications are performed in a prompt manner. If not, then when the headache comes, don't blame that shark attorney seeking to better his young client's bank account. The rules are in place for everyone and avoiding them can be a dangerous gamble. **MM**

Article written by David Albert Pierce
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CALIFORNIA

CHILD LABOR LAWS

Relevant Portions Of

2000

State of California

Department of Industrial Relations

Division of Labor Standards Enforcement

http://www.dir.ca.gov/DLSE/dlse.html

For complete set of rules

Immoral Places and Activities

Any person, whether as parent, guardian, employer or otherwise, and any firm or corporation, who as employer or otherwise, sends, directs, or causes to be sent or directed to any saloon, gambling house, house of prostitution or other immoral place **any minor under 18** is guilty of a misdemeanor. [PC 273(f)]

Farm labor contractors who knowingly send **any minor** to any house of ill fame, gambling house, or to any place where alcohol is sold to be consumed on the premises commit a misdemeanor and may have their license suspended. [LC 1698.4, 1698.5, 1697, and 1690]

Minors under 18 may not be exhibited, used or employed, or in any manner or under any pretense, sold, apprenticed, given away, let out, or disposed of to another person who causes, procures, or encourages the minor to engage in any obscene, indecent, or immoral purpose, exhibition, or practice whatsoever. [LC 1308(a)(3) and 1309]

9. ENTERTAINMENT INDUSTRY

Defined

The entertainment industry is defined in state regulations as "...any organization, or individual, using the services of any minor in: motion pictures of any type (film, videotape, etc.), using any format (theatrical, film, commercial documentary, television program, etc.), by any medium (theater, television, videocassette, etc.); photography; recording; modeling; theatrical productions; publicity; rodeos; circuses; musical performances; and any other performances where minors perform to entertain the public." [8 CCR 11751]

Permits to Work and Permits to Employ

Minors aged 15 days* to 18 years employed in the entertainment industry (as defined above) must have a permit to work and employers must have a permit to employ issued by the Division of Labor Standards Enforcement. [LC 1308.5, 8 CCR 11751(b), 11752, 11753, and 11754] These permits are also required for minors making phonographic recordings or who are employed as advertising or photographic models. [LC 1308.5(a)(6) and (7)] Permits are required even when the entertainment is noncommercial in nature. [LC 1308.5(a)(5)]

Permits to work or employ will not be issued if the environment is improper for the minor, the employment conditions are detrimental to the minor's health, or if the minor's education is hampered. [LC 1308.6] The Labor Commissioner may require school officials to investigate these employment conditions. [LC 1308.6]

The Division of Labor Standards Enforcement issues two types of entertainment work permits, individual permits and blanket permits. An individual permit is issued for six months to the minor specifically named in the application and must be renewed in the same manner and under the same conditions as the original permit. [8 CCR 11753(b)]

PROCEDURE FOR OBTAINING AN ENTERTAINMENT WORK PERMIT

- Obtain the "Application for Permission to Work in the Entertainment Industry" from any Division of Labor Standards Enforcement office or online (See list of Division of Labor Standards Enforcement offices at the end of this digest.)

- The minor's parent or legal guardian must complete all of the requested information on the application, and print and sign her or his name.

* No infant under the age of one month may be employed on any motion picture set or location unless a licensed physician who is board-certified in pediatrics provides written certification that the infant is at least 15 days old and, in his or her medical opinion, the infant was carried to full term, was of normal birth weight, is physically capable of handling the stress of filmmaking, and the infant's lungs, eyes, heart and immune system are sufficiently developed to withstand the potential risks. [LC1308.8(a)]

- If the minor is of **school age** (first grade and above), an authorized school official (i.e., principal, vice principal, dean, headmistress, headmaster, counselor or the minor's teacher) must complete the "School Record" portion of the application, sign his or her name and print his or her title or position, and affix the school's seal or stamp. (See "School Age Children" section below for more details.)

- If the minor is **not of school age** (15 days through kindergarten) the minor's parent or legal guardian must provide one of the following:

  - A certified copy of the minor's birth certificate;
  - The minor's baptismal certificate;
  - A letter on the hospital's letterhead from the hospital where the minor was born attesting to the birth of the minor; or
  - The minor's passport.

- The completed application with original signatures and the school's seal or stamp affixed thereto must either be mailed or presented in person to any Division of Labor Standards Enforcement office for issuance of the minor's entertainment work permit. Faxed copies cannot be accepted.

SCHOOL AGE CHILDREN

Although school officials may not issue work permits for employment in the entertainment industry, written verification from the minor's school demonstrating a satisfactory academic and attendance record must accompany the application for an individual permit. The verification must come from an authorized school official. Minors who attend a charter school must obtain the written verification from either the minor's school or the authority that granted the school's charter. Minors who are schooled in a setting other than a public school classroom must obtain the written verification from either the local school district or the county office of education where the minor lives. **Exceptions**: (1) Minors who attend a private full-time day school [EC 48222] must obtain the written verification from the principal or other person having charge of the private school. (2) Minors who are instructed by a private tutor pursuant to EC 48224 must obtain the written verification from either the local school district or the county office of education where the minor lives. (3) Minors who participate in independent study through the local public school system [EC 51745, et seq.] must obtain the written verification from either the minor's school, the local school district, or the county office of education where the minor lives. If school is not in session (i.e., school break, vacation, holiday, etc.), either the minor's most recent report card or a letter on school letterhead from the principal or other person having charge of the minor's school, or a letter on district letterhead from an official of the local school district where the minor lives, or a letter on the county board of education's letterhead from an official of that agency, indicating that the minor's scholastic record, attendance and health are all satisfactory or better, is required. An entertainment work permit based on the minor's report card or any of the aforementioned letters will be effective only for the particular period during which the minor's school is not in session. If a minor is from out of state, either the minor's most recent report card or a letter on school letterhead from the principal or other person having charge of the minor's school indicating that

the minor's scholastic record, attendance and health are all satisfactory or better, is required.

The Division of Labor Standards Enforcement may also require a physical examination to ensure that the minor is physically able to perform the duties required. [8 CCR 11753]

Blanket permits are issued for groups of minors hired for special events or particular productions lasting a limited time. [8 CCR 11754] Employers obtain these permits after demonstrating proof of workers' compensation coverage and that a parent or guardian will accompany each group of 20 minors or fraction thereof. [8 CCR 11754] The Division of Labor Standards Enforcement requires that school verification and parental consent forms for each minor accompany the application. Minors are not individually named on the permit, but a list of minors' names submitted by the employer is attached. Appropriate numbers of studio teachers must be supplied. [8 CCR 11754] Special arrangements must be made for groups of 100 minors or more. [8 CCR 11754] These permits expire at the end of the special event for which they are issued.

Employers in the entertainment industry must possess a Permit to Employ Minors in the Entertainment Industry issued by the Division of Labor Standards Enforcement when employing minors under either an individual or blanket permit. [8 CCR 11751(b)] Application forms for these permits may be obtained from any Division of Labor Standards Enforcement office. Employers must demonstrate proof of workers' compensation coverage. The permit is issued for an indefinite period, but the Division of Labor Standards Enforcement's policy requires that any interruption of workers' compensation requires a new application. Permits to employ may be denied, revoked, or suspended for any violation of law or regulation or any discrimination against a studio teacher for performing duties authorized and required by law and regulation for the protection of their minor charges. [8 CCR 11758 and 11758.1]

Exception: Minors of any age may appear in the following venues without permits [LC 1310]:

- In any church, public or religious school, or community entertainment;
- In any school entertainment or in any entertainment for charity or for children, for which no admission fee is charged;
- In any radio or television broadcasting exhibition, where the minor receives no compensation directly or indirectly therefor, and where the engagement of the minor is limited to a single appearance lasting not more than one hour, and where no admission fee is charged for the radio broadcasting or television exhibition;
- At any one event during a calendar year, occurring on a day on which school attendance is not required or on the day preceding such a day, lasting four hours or less, where a parent or guardian of the minor is present, for which the minor does not directly or indirectly receive any compensation.
- High school graduates and minors who have been awarded a certificate of proficiency pursuant to EC 48412 (such certificate being equivalent to a high school diploma), also do not require permits. [LC 1286(c), 8 CCR 11750]

Excused School Absences

A school may excuse the absences of a pupil who holds an entertainment work permit or who participates with a not-for-profit arts organization in a performance for a public school audience. [EC 48225.5] The law limits the number of excused absences for a child holding an entertainment work permit to five absences per school year, each of which may consist of up to five days. A child who is absent due to participation in a non-profit public school performance is limited to five excused absences per school year.

A child who receives an excused absence for participation in a not-for-profit arts organization performance at a public school must be allowed to make up missed assignments and receive credit for all work satisfactorily completed. A child excused from school attendance because of employment in the entertainment industry must be instructed during the absence by a studio teacher certified by the Labor Commissioner in accordance with Section 11755 of Title 8 of the California Code of Regulations. All work, grades, and credit that the pupil completes with the studio teacher must be accepted by the school district or county superintendent of schools. [EC 48225.5]

Hours of Work and Concurrent Requirements

Minors in the entertainment industry may not work more than eight hours in a day [LC 1308.7 and 1392] or more than 48 hours in a week. [LC 1308.7] They may only work between the hours of 5 a.m. and 10 p.m. (to 12:30 a.m. on days preceding a nonschoolday).
[LC 1308.7] "Schoolday" means any day that a minor is required to attend school for 240 minutes or more. [LC 1308.7] **Exception:** Upon the Labor Commissioner's approval following a written request (submitted 48 hours in advance), a minor aged eight to 18 may continue his or her part past 10 p.m. up to 12 midnight preceding a schoolday in a "presentation, play, or drama" which begins before 10 p.m. [LC 1308.5(a)(4)] *This exception may never be construed to allow the minor to be at the place of employment more than the maximum number of hours permitted in law or regulation.* In addition, state regulation establishes minimum workhour standards for individual age groups as described below.

Infants aged 15 days to 6 months may be at the place of employment for one period of two consecutive hours, which must occur between 9:30 a.m. and 11:30 a.m. or between 2:30 p.m. and 4:30 p.m. [8 CCR 11764].
Actual work may not exceed 20 minutes under any circumstances.
[8 CCR 11760] Infants may not be exposed to light exceeding 100 foot-candles for more than 30 seconds at a time. A studio teacher and a nurse must be present for each three or fewer infants aged 15 days to six weeks. A studio teacher and a nurse must be present for each 10 or fewer infants aged six weeks to six months. [8 CCR 11755.2 and 11760] A parent or guardian must always be present. [8 CCR 11757]

Minors aged six months to two years may be at the place of employment for up to four hours, and may work up to two hours. The remaining time must be reserved for the minor's rest and recreation. [8 CCR 11760]

Minors aged two years to six years may be at the place of employment for up to six hours, and may work up to three hours. The remaining time must be reserved for the minor's rest and recreation. [8 CCR 11760]

Minors aged six years to nine years when school is in session may be at the place of employment for up to eight hours, the sum of four hours work, three hours schooling, and one hour of rest and recreation. When school is not in session, work time may be increased up to six hours, with one hour of rest and recreation. [8 CCR 11760]

Minors aged nine years to 16 years when school is in session may be at the place of employment for up to nine hours, the sum of five hours work, three hours schooling, and one hour of rest and recreation. When school is not in session, work time may be increased up to seven hours, with one hour of rest and recreation. [8 CCR 11760]

All minors aged six months to 16 years must be provided with one studio teacher for each group of 10 or fewer minors when school is in session, and for each group of 20 or fewer minors on Saturdays, Sundays, holidays, or during school vacations. [8 CCR 11755.1] In addition to the studio teacher, a parent or guardian must always be present. [8 CCR 11757]
Exception: Minors under 16 do not require the presence of a studio teacher for up to one hour for wardrobe, make-up, hairdressing, promotional publicity, personal appearances, or audio recording if these activities are not on the set, if school is not in session, *and* if the parent or guardian is present. [8 CCR 11762]

Minors aged 16 years to 18 years when school is in session may be at the place of employment for up to 10 hours, the sum of six hours work, three hours schooling, and one hour of rest and recreation. When school is not in session, work time may be increased up to eight hours, with one hour of rest and recreation. [8 CCR 11760] Studio teachers need only be present for the minors' schooling, if schooling is still required. [8 CCR 11760] A parent or guardian need not be present.

The time minors may be permitted at the place of employment may be extended by no more than one-half hour for a duty-free meal period. [8 CCR 11761]

All travel time between the studio and a location counts as work time. Up to 45 minutes travel from on-location overnight lodging to a worksite is not generally considered work time. Travel between school or home and the studio is not work time. [8 CCR 11759]

All time spent in make-up or hairdressing in the minor's home, with the assistance of studio personnel, is considered work time. No make-up person or hairdresser may work on a minor in the minor's home before 8:30 a.m. Twelve hours must elapse between the time the minor is dismissed on one day and the time make-up or hairdressing begins on the following day. [8 CCR 11763]

Twelve hours must elapse between the minor's time of dismissal and call time on the following day. If the minor's regular school starts less than 12 hours after his or her dismissal time, the minor must be schooled the following day at the employer's place of business.
[8 CCR 11760(i)]

Minors who attend regular school may not work in the entertainment industry for the same number of hours as minors tutored by studio teachers. Minors tutored by studio teachers need only be instructed for three hours a day [EC 48224; 8 CCR 11760] while minors in regular school are generally required to attend school for a much longer time. Clearly, minors who attend regular school cannot assume the same workhour burden as tutored minors. Consequently, the Division of Labor Standards Enforcement adopted an enforcement policy for minors who attend regular school. This policy computes the length of the workday for minors who attend regular school by subtracting six hours from the maximum number of hours that tutored minors are permitted on set when school is in session. For example, tutored minors nine to 16 years of age are permitted to be on set for up to nine hours, therefore minors who attended regular school on a workday would be permitted to be on set for up to three hours. Such workdays for minors attending regular school do not require a one-hour rest and recreation period, but they may be extended one-half hour by a meal period. Finally, the Division of Labor Standards Enforcement's policy *always* assumes that the minor who attends regular school *always* attends for at least six hours. Thus, in an effort to safeguard the minor's educational interests, an artificially shortened regular schoolday is never allowed to result in an employer benefit of extended work hours.

Nothing in the Division of Labor Standards Enforcement's policy for minors who attend regular school may be construed to allow those minors to work during regular school hours. The Division of Labor Standards Enforcement's policy is specifically designed to dissuade any interruption of a minor's regular school attendance requirements. There is only one exception. A minor 14 years of age or older who attends regular school may work up to eight hours during regular school hours for each of two consecutive days upon the written permission of the minor's school. [8 CCR 11760(h)]

No law exempts minors employed in the entertainment industry from any of the prohibited occupations listed in Chapters 7 and 8 of this digest, except those entertainment activities cited in Labor Code Section 1308.

Neither studio teachers nor the Labor Commissioner are empowered to waive—at any time or under any circumstances—any minimum labor standard established in law or regulation. **Exception:** The special exemption described above allowing minors aged 8 to 18 to work past 10 p.m. up to 12 midnight on a schoolnight.

Wages

As set forth in the IWC Orders (Section 1(B) of Orders 11 and 12), **professional actors** are exempt from the minimum wage and overtime pay requirements of the California Industrial Welfare Commission. Minors employed in the entertainment industry who are not professional actors must be paid at least the minimum wage and overtime after eight hours in a workday and 40 hours in a

workweek.

Out-of-State Locations

California employers who are bound by contractual arrangements made in California to employ minors residing within the state to work on location outside of the state, must comply with all California regulations, including the use of studio teachers. [8 CCR 11756]

Studio Teachers

Studio teachers tutor minors whose employment responsibilities in this special industry do not allow them to attend full-time regular school. Excerpts of the California Code of Regulations, Title 8 that apply to studio teachers are reproduced below:

8 CCR Section 11755. Studio Teacher; Definition and Certification.

(a) A studio teacher within the meaning of these regulations must be a certificated teacher who holds one California teaching credential listed in paragraphs (1) through (4) of subsection (d) of this section and one California teaching credential listed in paragraphs (5) through (7) of subsection (d) of this section which are valid and current, and who has been certified by the Labor Commissioner. The teaching credential listed in (5) or (6) of subsection (d) of this section must be in one of the following subject areas: English, Math, Social Science, Science or Foreign Language.

(b) Certification by the Labor Commissioner shall be for a maximum three-year period, not to exceed the earliest expiration date of any one of the qualifying teaching credentials submitted in support of certification. A written examination will be required of the studio teacher by the Labor Commissioner at the time of certification or renewal. Such examination shall be designed to ascertain the studio teacher's knowledge of the labor laws and regulations of the State of California as they apply to the employment of minors in the entertainment industry. In addition, each studio teacher applicant will be required to successfully complete a twelve-hour course of instruction designed by the Labor Commissioner to instruct the applicant in the duties and responsibilities of the studio teacher. Every studio teacher, as a condition of renewal of certification by the Labor Commissioner, must complete three hours of instruction in a class designed by the Labor Commissioner to ensure that the studio teacher remains abreast of any changes in the laws and regulations and duties and responsibilities of the studio teacher.

(c) For the purpose of this section:

(1) "English" means composition, creative writing, debate, forensics, humanities, journalism, language arts, literature, public speaking, speech (oral communication), writing, and other subjects with content related to English.

(2) "Math" means algebra, calculus, geometry, mathematical analysis, number systems, probability and statistics, trigonometry, and other subjects with content related to mathematics.

(3) "Social Science" means American government and politics, anthropology, comparative government, economics, ethnic studies, European history, geography, government, history, humanities/cultural studies, international politics, psychology, sociology, United States history, world history, and other subjects with content related to social science.

(4) "Science" means astronomy, biology, botany, chemistry, conservation, general science, geology, physics, physiology, zoology and other subjects with content related to science.

(5) "Foreign Language" means any language other than English.

(d) The California teaching credentials that satisfy subsection (a) are as follows:

(1) A Multiple Subject credential issued under the provisions of the Teacher Credentialing Law of 1988, Education Code Sections 44200, *et seq.*, as amended (commonly known as the Bergeson Act), or issued under the provisions of the Teacher Preparation and Licensing Act of 1970, Education Code Sections 44200 *et. seq.*, (commonly known as the Ryan Act) as amended;

(2) An Elementary credential issued under the provisions of the Education Code in effect prior to the enactment of the Ryan Act (former Education Code Sections 13101 *et seq.*, commonly known as the Fisher Act; a so-called "Standard Credential");

(3) An Early Childhood Education credential issued under the provisions of the Education Code in effect prior to the enactment of the Ryan Act (former Education Code Sections 13101 *et seq.*, commonly known as the Fisher Act; a so-called "Standard Credential");

(4) An Elementary credential issued under the provisions of the Education Code in effect prior to the enactment of the Fisher Act (former Education Code Sections 12025 *et seq.*, as amended; a so-called "General Credential");

(5) A Single Subject credential issued under the provisions of the Teacher Credentialing Law of 1988, Education Code Section 44200, *et seq.*, as amended (commonly known as the Bergeson Act), or issued under the provisions of the Teacher Preparation and Licensing Act of 1970, Education Code Sections 44200 *et seq.*, (commonly known as the Ryan Act) as amended, in one of the following subject areas: English, Math, Social Science, Science or Foreign Language;

(6) A Secondary credential issued under the provisions of the Education Code in effect prior to the enactment of the Ryan Act (former Education Code Sections 13101 *et seq.*, commonly known as the Fisher Act; a so-called "Standard Credential"), in one of the following subject areas: English, Math, Social Science, Science or Foreign Language;

(7) A General Secondary Teaching credential or a Special Secondary Teaching Credential in Speech Arts issued under the provisions of the Education Code in effect prior to the enactment of the Fisher Act (former Education Code Sections 12025 *et seq.*, as amended; a so-called "General Credential").

(e) A studio teacher who already possesses a certification by the Labor Commissioner and who possesses only one of the credentials listed in subsections (1) through (7) of subsection (d) above may continue to be certified by the Labor Commissioner, provided that the applicant provides sufficient evidence to the Labor Commissioner that the applicant is currently in the process of obtaining a second credential to meet the requirements of subsection (a) above and such credential is obtained by the applicant no later than December 31, 2000. After December 31, 2000, no person shall be permitted to continue to be certified as a studio teacher who has not obtained two credentials of a type provided for in subsections (d) (1), (2), (3), or (4) and subsection (d) (5), (6), or (7) of this section.

(f) The Labor Commissioner may issue a special certificate as a studio teacher for a limited purpose where it is shown that a particular child actor may benefit from a particular applicant who may hold credentials of a special nature in order to meet the particular needs of that child actor. Studio teachers holding special certificates do not count toward satisfying the studio teacher to minor ratios specified in Section 11755.2.

8 CCR Section 11755.2—Use of Studio Teachers.

Employers shall provide a studio teacher on each call for minors from age 15 days to their sixteenth birthday, and for minors from age 16 to 18 years when required for the education of the minor. One studio teacher must be provided for each group of 10 minors or fraction thereof. With respect to minors age 15 days to 16 years, one studio teacher must be provided for each group of 20 minors or fraction thereof on Saturdays, Sundays, holidays, or during school vacation periods.

8 CCR Section 11755.3—Studio Teacher's Authority.

The studio teacher, in addition to teaching, shall also have the responsibility for caring and attending to the health, safety and morals of minors under 16 years of age for whom they have been provided by the employer, while such minors are engaged or employed in any activity pertaining to the entertainment industry and subject to these regulations. In the discharge of these responsibilities, the studio teacher shall take cognizance of such factors as working conditions, physical surroundings, signs of the minor's mental and physical fatigue, and the demands placed upon the minor in relation to the minor's age, agility, strength and stamina. The studio teacher may refuse to allow the engagement of a minor on a set or location and may remove the minor therefrom, if in the judgment of the studio teacher, conditions are such as to present a danger to the health, safety or morals of the minor. Any such action by the studio teacher may be immediately appealed to the Labor Commissioner who may affirm or

countermand such action.

8 CCR Section 11755.4—Studio Teacher's Remuneration.

The remuneration of the studio teacher shall be paid by the employer.

ENTERTAINMENT INDUSTRY—SUMMARY CHART

AGE	WORK TIME SCHOOL IN SESSION	WORK TIME SCHOOL NOT IN SESSION	CONCURRENT REQUIREMENTS
15 days to 6 months	May only be employed between 9:30 a.m. and 11:30 a.m. or between 2:30 p.m. and 4:30 p.m. [8 CCR 11764]	20 minutes work activity 2 hrs max at employment site	Permits to work and employ required. [8 CCR 11751] Parent or guardian must be present. [8 CCR 11757] 1 studio teacher and 1 nurse must be present for each 3 or fewer infants 15 days to 6 weeks old. [8 CCR 11760, 11755.2] 1 studio teacher and 1 nurse must be present for each 10 or fewer infants 6 weeks to 6 months old. [8 CCR 11760, 11755.2] May not be exposed to light exceeding 100 footcandles for more than 30 seconds. [8 CCR 11760]
6 months to 2 years	May only be employed between 5 a.m. and 12:30 a.m. [LC 1308.7]	2 hours work activity 4 hours max at employment site Balance for rest and recreation	Permits to work and employ required unless the minor is a high school graduate or equivalent. [8 CCR 11751] High School graduates may be employed as adults. Parent or guardian must be present. [8 CCR 11757]
2 years to 6 years	May only be employed between 5 a.m. and 12:30 a.m. [LC 1308.7]	3 hours work activity 6 hours max at employment site Balance for rest and recreation	Studio teacher must be present. [8 CCR 11751.1] 1 studio teacher required per 10 minors. [8 CCR 11755.1] 1 studio teacher per 20 minors on weekends, holidays, and school breaks and vacations. [8 CCR 11755.1]
6 years to 9 years	4 hours work activity 3 hours school 1 hour rest and recreation 8 hrs. max at employment site May only be employed between 5 a.m. and 12:30 a.m. (to 10 p.m. preceding schooldays ≥ 4 hours) [LC 1308.7]	6 hours work activity 1 hour rest and recreation	Studio teachers are responsible for the health, safety, and morals of the minor. [8CCR 11755.2] Minors in grades one through six must be tutored between the hours of 7 a.m. and 4 p.m. Minors in grades seven through twelve must be tutored between the hours of 7 a.m. and 7 p.m. [EC 48225.5]
9 years to 16 years	5 hours work activity 3 hours school 1 hour rest and recreation 9 hrs. max at employment site May only be employed between 5 a.m. and 12:30 a.m. (to 10 p.m. preceding schooldays ≥ 4 hours) [LC 1308.7]	7 hours work activity 1 hour rest and recreation	Permits to work and employ required unless a high school graduate or equivalent. High school graduates may be employed as adults.
16 years to 18 years	6 hours work activity 3 hours school 1 hour rest and recreation 10 hrs. max at employment site May only be employed between 5 a.m. and 12:30 a.m. (to 10 p.m. preceding schooldays ≥ 4 hours) [LC 1308.7]	8 hours work activity 1 hour rest and recreation	Studio teacher need only be present for minors' schooling if minor still required to attend school.
Regular School Attendance and Work Hours	Compute work hours for each age group by subtracting 6 hours from the max time at employment site for tutored minors when school in session. The difference is the maximum work hours for these minors. Thus, 9 to16 year-olds who attend regular school may only work up to 3 hours on a schoolday. The 1-hour of rest and recreation is not required, but the workday may be extended one-half hour by a meal period. No work permitted during regular school hours. Exception: Minors 14 and over may work up to 8 hours during regular school hours for each of 2 consecutive days if excused with the school's written permission. [8 CCR 11760]		

Max Day/Week	No minor may be employed over 8 hours in a day. [LC 1308.7, 1392] or over 48 hours in a week. [LC 1308.7] No exceptions.
Meal Periods	Meal periods are not work time. Workdays extended up to one-half hour for a meal period. [8 CCR 11761] Meals must be within 6 hours of call time and/or previous meal period. Teachers may require an earlier meal period.
Travel Time	Travel between studio and location is work time. Up to 45 minutes travel from on-location, overnight lodging to work site is not generally considered work time. Travel between school or home and studio is not work time. [8 CCR11759]
Day's End	12 hours must elapse between dismissal and next day's call time. No exceptions. [8 CCR11760]
Make-up Off Set	Make-up in minor's home by persons employed on the same project is work time, and may not begin before 8:30 a.m. 12 hours must elapse between dismissal and the beginning of the next day's make-up/hairdressing. [8 CCR 11763]
Out of State	California employers who employ resident minors outside of California under contractual arrangements made within California, must comply with all California child labor laws and regulations. [8 CCR 11756]

Note: Daily work and school hour schedules for tutored minors of all age groups are provided in 8 CCR 11760.

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11. PENALTIES FOR VIOLATING CHILD LABOR LAWS

Civil Penalties

The state of California provides two types of civil penalties for violations of child labor laws, Class A and Class B. [LC 1288]*

Class A violations are the more severe, generally involving underage employment in hazardous occupations. Class A violations include violations of Labor Code Sections 1290 (manufacturing and underage employment); 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1308 (hazardous occupations); 1308.1 (door-to-door sales); 1392 (eight-hour day); Title 8 California Code of Regulations Sections 11701, 11703, 11707 (hazardous activities); 11706 (door-to-door sales); and any other violations that the Director of Industrial Relations determines present an imminent danger to minor employees or a substantial probability that death or serious physical harm would result therefrom. [LC 1288; 8 CCR 11780] The violation of Labor Code Section 1391 (work hours) for the third or subsequent occasions also constitutes a Class A violation. [LC 1288]

Class A violations incur penalties of not less than five thousand dollars ($5,000) and up to ten thousand dollars ($10,000) for each and every violation. [LC 1288; 8 CCR 11779 and 11779.1]

Class B violations include violations of Labor Code Sections 1299 (work permits], 1308.5 (entertainment industry), and such other violations that the Director of Industrial Relations determines have a direct or immediate relationship to the health, safety, or security of minor employees other than Class A violations. [LC 1288, 8 CCR 11782] The violation of Labor Code Section 1391 (work hours) is a $500 Class B violation upon the first violation and a $1,000 Class B violation on the second violation. [LC 1288]

Class B violations carry civil penalties of not less than five hundred dollars ($500) and up to one thousand dollars ($1,000) for each and every violation. [LC 1288 (b), 8 CCR 11781 and 11781.1]

In addition, any employer may be liable for civil penalties for:

- Failure to pay the applicable minimum wage. [LC 1197.1]
- Failure to carry workers' compensation insurance. [LC 3722] (See Chapter 10 of this digest.)
- Failure to provide a written deduction statement. [LC 226]

Criminal Penalties

Criminal violations of child labor laws are misdemeanors punishable by fines ranging up to $10,000 or by confinement in the county jail for periods up to 6 months, or by both fine and imprisonment. [LC 1175, 1199, 1303, 1308, 1308.2, 1308.3, 1308.5, 1391, 1392, 1308.7, 1309 and 1309.5, EC 48454, 49182, and 49183]

In essence, almost all the child labor laws (as well as the compulsory education laws) have some misdemeanor penalty attached to them.

* Civil penalties for statutes listed are effective as of January 1, 1996. Until that date, Labor Code Section 1290 is a Class B violation, while Labor Code Sections 1294.5 and 1308.1 have only a misdemeanor penalty attached to their violation. All other listed statutes currently carry the penalties as described, and those penalties will continue unchanged after January 1, 1996.

Liability for Child Labor Penalties

The employer, never the minor, is liable for child labor violations.

All statutes governing prohibited occupations (listed in Chapter 8 of this digest) make liable any person who employs *or permits* underage minors to work in the prohibited occupation. This means that any person—even if they are not the employer—who permits an underage minor to perform a hazardous duty—no matter how voluntary the act is on the part of the minor—is liable for Class A penalties. Even minors who regard themselves as self-employed may not engage in these prohibited activities. A client who permits such a minor to engage in the prohibited activity would be liable for Class A penalties. This type of liability also extends to underage employment in any of the federally regulated occupations adopted by the state of California. For example, minors under 16 may not be employed *or permitted* to work in occupations involving mining, manufacturing, processing, or perform any duties in related workrooms. [LC 1294.1 and 1290] Moreover, minors under 14, for example, may not be employed *or permitted* to work in clerical or food service occupations since a minor must be at least 14 to engage in these activities. [LC 1294.1]

Owners of real property who knowingly benefit from child labor violations are subject to all applicable civil penalties, whether or not the person is the minor's employer.
[LC 1301]

"Any person…who as parent, guardian, relative, employer, or otherwise having control of any minor, exhibits, uses, or employs, or in any manner or under any pretense, sells, apprentices, gives away, lets out, or disposes of the minor to any person, under any name, title, or pretense for or who uses, procures, or encourages the minor to engage in...[a]ny business, exhibition, or vocation injurious to the health or dangerous to the life or limb of the minor" or in any of the activities specified in Labor Code § 1308 are liable for any civil and criminal penalties which arise from its violation. [LC 1308] Occupations prohibited in LC 1308 are listed in Chapter 8 of this digest.

Parents or guardians (in addition to employers, agents, managers, etc.) who permit the minor to be employed unlawfully in the entertainment industry (which includes any violation of state regulations governing minors in the entertainment industry] are liable for any civil and criminal penalties that arise from the violation. [LC 1308.5]

Garment manufacturers who within a two-year period commit a second violation involving child labor, minimum wage, or maximum hours of labor, in any combination of violations, may be required by the Labor Commissioner to post a surety bond. Upon a third or subsequent violation within a two-year period, the Labor Commissioner may suspend a garment manufacturer's registration for up to one year and confiscate any partially or fully assembled garments. [LC 2679(b)]

Filing a Complaint

Complaints for violations of state child labor standards and wage laws may be filed with the nearest Division of Labor Standards Enforcement office. The Division of Labor Standards Enforcement will accept anonymous and confidential complaints. Employees are urged to keep their own records to substantiate their claims, especially with regard to hours and wages. It is unlawful for employers to discharge or discriminate against any employee who files or threatens to file a bona fide complaint or claim with the Labor Commissioner. [LC 98.6] Employers may not adopt policies or retaliate against employees who disclose information to a government agency with the reasonable belief that the information reveals a violation of state or federal law. [LC 1102.5]

Safety and health hazards that are not specifically part of the child labor protections outlined in this booklet should be reported to the nearest office of the California Division of Occupational Safety and Health (also called Cal/OSHA). Employees may not be discriminated or retaliated against for filing health and safety complaints with Cal/OSHA. [LC 6310 and 6311]

Complaints regarding federal child labor standards as well as federal wage and hour standards may be filed with the nearest office of the Wage and Hour Division of the U.S. Department of Labor.

12. FEDERAL FAIR LABOR STANDARDS ACT

In addition to being governed by the California child labor laws, most employees are governed by the federal Fair Labor Standards Act (FLSA). Generally, employees are covered by the FLSA if their activities meet either one or both of two tests, the employee test or the enterprise test. Under the employee test, employees must be engaged in commerce or in the production of goods for commerce or in activities closely related and directly essential to commerce. [29 CFR 776] "Commerce" means interstate or foreign trade, commerce, transportation, transmission, or communication and has the broadest interpretation. For example, "transactions" need not be commercial, "transportation" includes person and things, and "transmission" may refer to tangibles or intangibles. The employee need not directly affect commerce, but merely be engaged "in the channels of commerce." [29 CFR 776.8]

Under the enterprise test, employees of specified enterprises (which include related activities performed through a unified operation or common control by any person(s) for a common business purpose] are covered by the FLSA if they merely work on goods or materials that *have been* moved in or produced for commerce. [29 USC 203(r) and (s)] Thus, enterprises specified in the FLSA that use anything (even, for example, paper and pencils] that has crossed a state line or national border places all employees of the enterprise under the FLSA regardless of their individual duties. Those specified enterprises include [29 USC 203(s)(1)]:

- Enterprises whose annual gross volume of sales or business done is at least $500,000 (exclusive of excise taxes at the retail level that are separately stated);
- Enterprises engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises of such institution, a school for mentally or physically handicapped or gifted children, a preschool, elementary or secondary school, or an institution of higher education, whether or not such institutions are public, private, for profit, or not for profit.
- State and local agencies.

The annual dollar volume of $500,000 for enterprise coverage became effective after March 31, 1990. Enterprises that qualified for coverage under the previous dollar volume of $362,500 remain covered by all the FLSA standards in effect at that time, including the child labor provisions. Extensive discussion of FLSA coverage may be found in 29 CFR 570.112, et seq. and 29 CFR Parts 776 and 779. The Department of Labor also publishes a pamphlet which discusses coverage titled, *Employment Relationship under the Fair Labor Standards Act*.

The FLSA establishes 16 as the minimum age for general employment. Minors 16 and above may work in any occupation except for occupations declared hazardous in federal regulation for persons under 18. (See Chapter 8 of this digest.) Fourteen and fifteen-year-olds are allowed to work only in limited, specified occupations. (See Chapter 7 of this digest.) Minors under 14 may not work in firms subject to the FLSA, except in agriculture. The state of California has adopted federal hazardous occupation standards for minors under 18 and many of the standards for 14 and 15-year-olds.

The FLSA's child labor provisions (1) prohibit the shipment in interstate commerce or in foreign commerce of goods produced in or about establishments in the United States in which oppressive child labor has been employed within 30 days prior to the removal of the goods; and (2) prohibit the employment of oppressive child labor in interstate or foreign commerce or in the production of goods for such commerce. "Oppressive child labor" means the employment of minors in violation of the child labor provisions of the FLSA or its attendant regulations.

Exemptions from federal child labor standards [29 USC 203, 213] include:

- Minors under 16 employed by parents in occupations *other than* manufacturing or mining. However, parents may not employ their minor children of any age in occupations declared hazardous in federal regulation for minors under 18.
- Minors employed as actors or performers in motion pictures, theatrical, radio, or television productions;
- Minors engaged in the delivery of newspapers to consumers;
- Minors employed as home workers in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths).
- Minors employed on a farm owned or operated by his or her parent or person standing in place of the parent are exempt but may not be employed in any mining or manufacturing occupation on the farm. [29 USC 213(c)(1) and (2), 29 CFR 570.123(c)] The federal Hazardous Occupation Orders for minors under 18 do not apply to minors employed in agriculture. [29 CFR 570.123(d)] Only the occupations declared hazardous to minors under 16 employed in agriculture apply. All these occupations are listed in Chapter 8 of this digest.
- Minors employed in domestic service occupations are also exempt from the child labor provisions of the FLSA, and these exemptions are explained in "Household Occupations" in Chapter 7 of this digest.

If the federal and state laws conflict, the more protective standard always prevails. Before employing minors, an employer should consult with the Wage and Hour Division of the U.S. Department of Labor, in order to determine the applicability of the federal wage and hour and child labor laws. Offices are located in the following cities in California:

Bakersfield	Los Angeles	Oxnard	San Francisco
Fresno	Oakland	Sacramento	San Jose
Glendale	Ontario	San Diego	Santa Ana

Consult your telephone directory for the address and telephone number.

The Fair Labor Standards Act may be found in Title 29 of the United States Code commencing at Section 201. Most accompanying child labor regulations may be found in Part 570 of Title 29 of the Code of Federal Regulation.

PRODUCER-
SCREEN ACTORS GUILD
CODIFIED BASIC AGREEMENT
OF 2005

TERM: JULY 1, 2005 - JUNE 30, 2008

Screen Actors Guild
5757 Wilshire Blvd.
Los Angeles, CA 90036
(323) 954-1600

ALLIANCE OF
MOTION PICTURE
AND TELEVISION
PRODUCERS
15503 Ventura Blvd.
Encino, CA 91436
(818) 995-3600

weeks of the commencement of the production of such motion picture, and which play, staged substantially as presented on the legitimate stage and utilizing substantially the same cast as the play, is to be photographed as a motion picture. Producer and the Union agree to meet within thirty (30) days from receipt of such notice for the purpose of negotiating with respect to the terms and conditions of such employment. If no agreement is reached with respect thereto within such sixty (60) day period, the Union may instruct its members to withhold services with respect to the production in such motion picture only.

This provision shall not apply to a motion picture produced from a screenplay written for such motion picture, based on such play, and photographed in a normal motion picture manner as distinguished from a recordation, as such, of the play.

50. EMPLOYMENT OF MINORS

A. Preamble

(1) The Producers and Union, recognizing the special situation that arises when minor children are employed, have formulated the following provisions in addition to those contained in other Sections of this Agreement to ensure that:

(a) The environment in which the performance is to be produced is proper for the minor;

(b) The conditions of employment are not detrimental to the health, morals and safety of the minor; and

(c) The minor's education will not be neglected or hampered by his or her participation in such performance.

(2) Engagement

Upon employment of any minor, Producer shall notify the minor's parent or guardian of the terms and conditions of employment, including the name of the Producer, place and duration of location work, if any, and special abilities required.

Upon the employment of any minor in any areas outside of California, Producer shall notify the Union of such employment and the area where such employment will take place.

B. It is recognized that when minors are employed in the State of California or taken from the State of California pursuant to a contractual arrangement made in the State of California, the applicable California laws and regulations shall regulate such employment.

When minors are hired and employed within states other than California, the Producer shall be required to determine and comply with the prevailing law governing and defining minors. In addition to these legal requirements for minors not employed in the State of California or not taken from the State of California pursuant to a contractual arrangement made in the State of California, the Producer and the Union agree to the following provisions of Section 50 herein for the employment of minors:

C. Definition of Minor

The term "minor," as used herein, means any performer under the age of eighteen (18) years, except that it shall not include any such performer if: (1) the performer has satisfied the compulsory education laws of the state governing the performer's employment; (2) the performer is married; (3) the performer is a member of the armed forces; or (4) the performer is legally emancipated, in which case it is agreed that both the Producer and the minor shall comply fully with the legal terms of the minor's emancipation.

D. Education

(1) (a) If a minor is guaranteed three (3) or more consecutive days of employment, Producer agrees to employ a teacher, from the first day of such employment, whenever the minor is engaged on any day during which the primary or secondary school regularly attended by the minor is in session. The same shall apply when the Producer's production schedule for a given production plans for scenes to be photographed with the minor on three (3) or more consecutive days. When the minor is employed in scenes planned on the production schedules for only two (2) consecutive days and it is subsequently determined that additional calls will be necessary, Producer shall use its best efforts to provide a teacher on the third consecutive day of such employment or, at the latest, on the fourth consecutive day of such employment and thereafter.

(b) On any day a minor is employed but is not otherwise entitled to have a teacher, the minor shall nevertheless be taught if the primary or secondary school such minor regularly attends is in session and Producer has employed a teacher to instruct another performer engaged on the same production.

BHBA Entertainment Law

(c) If Producer employs a minor for post-production work, no teacher need be provided if the minor's call for such work is after the minor's regular school has been dismissed for the day.

(d) Producer shall provide schooling as required by this Agreement during Producer's workweek for the production.

(2) Such teacher shall have proper teaching credentials appropriate to the level of education required (*i.e.*, primary or secondary level) from Washington D.C. or any state within the United States, but need not be credentialed by or a resident of the state wherein the minor's employment occurs unless otherwise required by law.

(3) The teacher's remuneration shall be paid by Producer.

(4) Producer shall provide a ratio of not more than ten (10) minors per teacher, except that up to twenty (20) minors may be taught per teacher if the minors are in not more than two (2) grade levels.

(5) A teacher may not serve more than one (1) production in any one (1) day, except in an emergency and except as provided in subsection D.(1)(c) above.

(6) If the minor's regular instruction is primarily in a language other than English, teaching in that language will be provided whenever feasible.

(7) However, on any day that the minor is not required to report to the set, the minor may attend his or her regular school, but Producer shall not count more than three (3) hours of the hours attended per day at the minor's regular school as school time for purposes of this Agreement. If the minor's parent or guardian does not choose to have the minor attend regular school on such day, Producer may elect to either teach the minor on the set or in the minor's home or in the home of the teacher employed by Producer, but only if there are no other minors present in the home who are not also being taught by the teacher.

(8) Producer agrees to provide a school facility, such as a schoolhouse, classroom, trailer schoolhouse or other schooling area, which closely approximates the basic requirements for classrooms, especially with respect to adequate lighting, heating, desks and chairs. Stationary buses or cars are not adequate school facilities unless used exclusively for the minors during instruction. A moving car or bus shall never be used as a school facility; minors must not be taught while being transported to or from local locations.

(9) Producer shall provide schooling equipment and supplies. However, the minor's parent or guardian must, if permitted by the minor's regular school, secure school assignments and the minor's school books for use at the place of employment.

(10) No one shall be allowed in an area being utilized by Producer as a school facility except the teacher and those minors being taught.

(11) The teacher shall determine the required number of hours to be devoted to instruction during a day, but the minor must be taught an average of at least three (3) hours per day, no period of less than twenty (20) minutes duration being acceptable as school time. The maximum number of hours that may be set aside for the minor's instruction in any one (1) day shall be as follows: for kindergarten, four (4) hours; for grades one (1) through six (6), five (5) hours; and for grades seven (7) through twelve (12), six (6) hours.

(12) Producer shall require the teacher to prepare a written report for each minor covering attendance, grades, etc. These reports shall be given to the minor's parents or guardian to deliver to the minor's regular school at the end of each assignment or at such intervals as required by such school.

E. Supervision

(1) On days when the minor's regular school is in session, Producer must require the minor to report to the teacher immediately upon arrival at the place of employment. When school is in session, the teacher has primary responsibility for the education and supervision of the minor.

(2) Presence of the teacher does not relieve parents, however, of the responsibility of caring for their own children. A parent or guardian must be present at all times while a minor is working, and shall have the right, subject to filming requirements, to be within sight and sound of the minor, except as restricted herein by subsection D.(10).

(3) When a parent is working at the minor's place of employment but not at the scene of employment, either the other parent or a guardian must be present with the minor.

(4) A guardian, as that term is used in this Section, must be at least eighteen (18) years of age, have the written permission of the minor's parent(s) to act as a guardian, and show sufficient maturity to be approved by Producer (and teacher, if teacher is present).

(5) No minor may be sent to wardrobe, make-up, hairdressing, or employed in any manner unless under the general supervision of a teacher, parent or guardian.

(6) If Producer engages any minor under the age of fourteen (14), Producer must designate one (1) individual on each set to coordinate all matters relating to the welfare of the minor and shall notify the minor's parent or guardian and teacher, when one is present, of the name of such individual.

(7) Parents and guardians are not permitted to bring other minors not engaged by Producer to the place of employment without Producer's specific permission.

F. Working Hours

(1) Minors less than six (6) years of age are permitted at the place of employment for six (6) hours (excluding meal periods, but including school time, if any).

(2) Minors who have reached the age of six (6) years but who have not attained the age of nine (9) years may be permitted at the place of employment for eight (8) hours (excluding meal periods, but including school time).

(3) Minors who have reached the age of nine (9) years but who have not attained the age of sixteen (16) years may be permitted at the place of employment for nine (9) hours (excluding meal periods, but including school time).

(4) Minors who have reached the age of sixteen (16) years but who have not attained the age of eighteen (18) years may be permitted at the place of employment for ten (10) hours (excluding meal periods, but including school time).

(5) The work day for a minor shall begin no earlier than 5:00 a.m. and shall end no later than 10:00 p.m. on evenings preceding school days. On evenings preceding non-school days, the minor's work day shall end no later than 12:30 a.m. on the morning of the non-school day.

(6) If a minor is at location, the minor must leave location as soon as reasonably possible following the end of his or her working day, and may not be held for transportation.

(7) Interviews and fittings for children who are attending school shall be held outside of school hours. Such interviews and fittings shall be held not later than 9:00 p.m.

At least two (2) adults shall be present at all times during a fitting.

(8) A minor shall not work more than six (6) consecutive days. However, for this purpose, a day of school only or travel only shall not be counted as one of said consecutive days.

(9) Producer shall set the first call at the beginning of the minor's employment and dismissal on the last day of the minor's employment so as to ensure that the minor will have a twelve (12) hour rest period prior to and at the end of the employment. For example, if a minor's last day of employment is Wednesday, and the minor will be attending school at 8:30 a.m. on Thursday, the minor must be dismissed by 8:30 p.m. on Wednesday.

G. Dressing Rooms

No dressing rooms shall be occupied simultaneously by a minor and an adult performer or by minors of the opposite sex.

H. Play Area

A safe and secure place for minors to rest and play must be provided by Producer.

I. Medical Care and Safety

(1) The minor's parent or guardian must provide Producer a certificate signed by a doctor licensed to practice medicine within the state wherein the minor resides or is employed, stating that the minor has been examined within six (6) months prior to the date he or she was engaged by Producer and has been found to be physically fit.

(2) Prior to a minor's first call, Producer must obtain the written consent of the minor's parent or legal guardian for medical care in the case of an emergency. However, if the parent or legal guardian refuses to provide such consent because of religious convictions, Producer must at least obtain written consent for external emergency aid, provided that the obtaining of such consent is not contrary to the aforementioned religious convictions.

(3) No minor shall be required to work in a situation which places the child in clear and present danger to life or limb. If a minor

believes he/she would be in such danger, the parent or guardian may have the teacher and/or stunt coordinator, if either or both are present, discuss the situation with the minor. If the minor persists in his/her belief, regardless of its validity, the minor shall not be required to perform in such situation.

(4) When a minor is asked to perform physical, athletic or acrobatic activity of an extraordinary nature, the minor's parent or guardian shall first be advised of the activity and shall represent that the minor is fully capable of performing the activity. Producer will comply with reasonable requests for equipment that may be needed for safety reasons.

J. Child Labor Laws

(1) A summary of the applicable state child labor laws governing the employment of the minor shall be kept in the Producer's production office if such summary is readily available.

(2) Any provision of this Section which is inconsistent and less restrictive than any child labor law or regulation in applicable state or other jurisdictions shall be deemed modified to comply with such laws or regulations.

K. Inconsistent Terms

The provisions of this Section shall prevail over any inconsistent and less restrictive terms contained in any other Sections of this Agreement which would otherwise be applicable to the employment of the minor, but such terms shall be ineffective only to the extent of such inconsistency without invalidating the remainder of such Sections.

L. Arbitration

Any dispute between performer and Producer with respect to any provision contained in this Section shall be arbitrable, regardless of the amount of compensation paid or guaranteed to the performer. Any such dispute between the Union and Producers shall likewise be arbitrable. The procedures for such arbitrations shall be those contained in Section 9 hereof.

M. Overnight Location - Expenses

When state law or this Agreement requires that a parent or guardian of a minor be present while such minor is working and such minor is employed on an overnight location under the terms of this Agreement, Producer will, in conjunction with its negotiation for the

minor's services, also negotiate in good faith with respect to expenses incurred by the parent or guardian for transportation, lodging and meals that may be required for the assignment and such expenses must be approved in advance. In the case of air transportation, Producer will endeavor to provide for the parent or guardian the same class of transportation, on the same flight as the minor, if reasonably available. In the case of lodging, Producer shall endeavor to provide a room for the parent or guardian in the same facility and adjacent to the minor's room, if reasonably available, provided that a minor under eleven (11) years old may be required to share his/her room with his/her parent or guardian, and a minor eleven (11) years to sixteen (16) years old may be required to share his/her room with a parent of the same sex.

N. Time Cards

On production time reports or time cards submitted to the Union, Producer shall designate minors with a "K" next to the minor's name.

51. ALCOHOLISM AND DRUG ABUSE PROGRAM

Producers and the Union recognize alcoholism and drug abuse as conditions which impact upon the productivity and safety of the motion picture industry. The parties agree to cooperate in an effort to establish a functioning alcoholism and drug abuse program to benefit the motion picture industry.

52. TRANSLATION

Performer may not be required to translate another performer's dialogue into any language other than that in which a script is written. However, performer may bargain separately for such non-covered services.

53. TEMPORARY EMPLOYMENT - NON-RESIDENT ALIEN PERFORMERS

Whenever the Producer files a petition for temporary employment with a governmental agency on behalf of a non-resident alien performer whose employment would be covered under this Agreement, Producer shall also inform the Union of the role to be portrayed by the performer, the salary to be paid and the performer's prior acting experience. The Union shall keep such information confidential.

The Union agrees to cooperate with the Producer and the governmental agency to expedite the petition process. The Union shall support any petition filed on behalf of a non-resident alien performer

BHBA Entertainment Law

4/6/11
Daily Journal

Talent Manager Charged With Crimes

By Jean-Luc Renault
Daily Journal Staff Writer

LOS ANGELES — The Los Angeles City Attorney's office this week continued its crackdown on questionable talent service operators, filing criminal charges against a man prosecutors say ran an unlicensed company that charged Hollywood hopefuls upfront fees in exchange for representation.

The misdemeanor charges filed Tuesday against Nicholas Tomas Roses, 21, and his company, Roses Entertainment Group, can carry up to seven years in jail and $70,000 in fines.

The charges come three months after the city attorney's office first used a new set of California laws meant to curb agencies that take advantage of actors and models.

Roses failed to post a $50,000 bond required to run management and talent agencies under state labor codes, according to the city attorney's office. His company also improperly charged thousands of dollars in upfront fees for representation and failed to use written agreements, according to the criminal complaint.

The city attorney's office received complaints from parents originally from Ohio whose minor children Roses agreed to represent last year. He allegedly urged the families to relocate to Los Angeles and enroll their children in his week-long "summer entertainment industry boot camp" for a $3,000 fee.

Parents have accused Roses of failing to provide adequate seating, food, water and breaks for the children, one of whom developed swollen lungs, hives and rashes during the workshop, according to the city attorney's office.

Roses, who is scheduled for an arraignment in May, did not immediately respond to requests for comment on the charges.

The Krekorian Talent Scam Prevention Act went into effect last year. In January, prosecutors filed charges against two other men in similar alleged schemes. Those cases are pending.

Mark Lambert, a deputy city attorney working on all three cases, said that loopholes in state law had long hindered prosecutors from filing criminal charges against talent services scam operators.

"We needed these laws so that when people made complaints, we could prosecute," Lambert said.

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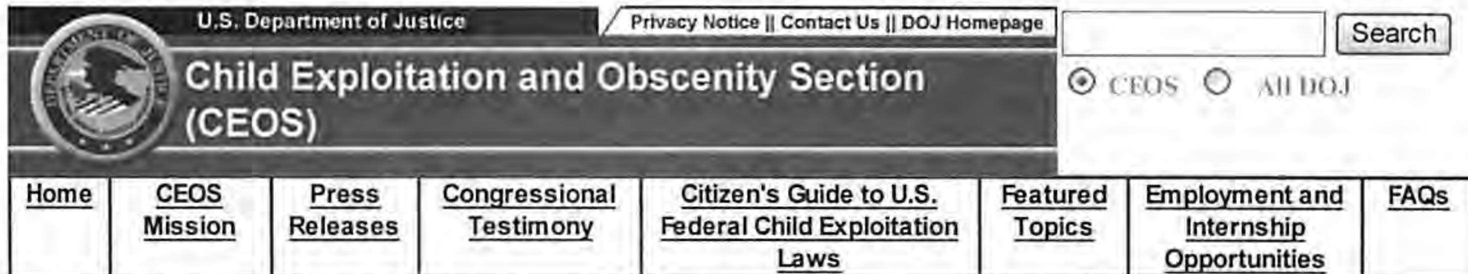

Citizen's Guide to United States Federal Child Exploitation Laws

Child Pornography

Child pornography is defined by law as the visual depiction of a person under the age of 18 engaged in sexually explicit conduct. See 18 U.S.C. §§ 2256(1) and (8). This means that any image of a child engaged in sexually explicit conduct is illegal contraband. Notably, the legal definition of sexually explicit conduct does not require that an image depict a child engaging in sexual activity. See 18 U.S.C. § 2256(2). A picture of a naked child may constitute illegal child pornography if it is sufficiently sexually suggestive. In addition, for purposes of the child pornography statutes, federal law considers a person under the age of 18 to be a child. See 18 U.S.C. § 2256(1). It is irrelevant that the age of consent for sexual activity in a given state might be lower than 18. A visual depiction for purposes of the federal child pornography laws includes a photograph or videotape, including undeveloped film or videotape, as well as data stored electronically which can be converted into a visual image. For example, images of children engaged in sexually explicit conduct stored on a computer disk are considered visual depictions.

Federal prosecutors enforce the laws that make it a crime to possess, receive, distribute or produce child pornography in a way that affects interstate or foreign commerce. See 18 U.S.C. §§ 2251, 2252, 2252A. Thus, federal jurisdiction is implicated when the visual image is transported across state lines, or when the visual image was produced using materials that were transported across state lines. It is important to note that this set of requirements covers transporting pornographic materials depicting children electronically by computer. For example, it is illegal under federal law to send an email containing child pornography to a person in another state. It is also illegal to send an email containing child pornography to a person in the same state if the computer server for the email is located in a different state. Given the complex configuration of the Internet, this will almost always be the case. Not surprisingly, it is illegal to download child pornography from an Internet web site. Even in cases where the image itself has not traveled in interstate or foreign commerce, federal law may still be violated if the materials used to create the image - - such as the CD Rom on which the child pornography was stored, or the film with which child pornography was created - - traveled in interstate or foreign commerce. Id. While federal courts may interpret these situations differently depending upon the jurisdiction, the federal government has jurisdiction to investigate and prosecute offenders in such situations. Mailing child pornography via the United States Postal Service is automatically a federal offense, even if material is mailed to someone in the same state. Moreover, people possessing, receiving, distributing or producing child pornography can be prosecuted under state laws in addition to, or instead of, federal law.

People who sell or purchase children intending or knowing that the child will be involved with any sexual activity are also prosecuted under federal law. See 18 U.S.C. § 2251A. Federal prosecutors have legal authority to prosecute people who buy and sell children for pornographic or sexual activity when the child being sold or transferred must be transported in interstate or foreign commerce, or the offer to sell or purchase the child is communicated or transported in interstate or foreign commerce by any means, including computer or United States mails. Where

this interstate conduct does not occur, state and local law enforcement authorities can prosecute this reprehensible conduct.

Congress recently significantly increased the maximum prison sentences for child pornography crimes and in some instances created new mandatory minimum sentences. These prison terms can be substantial, and where there have been prior convictions for child sexual exploitation, can result in a life sentence.

- **More information on:** Citizen's Guide to Laws Overview
- **More information on:** Citizen's Guide to Laws on Trafficking, Traveling and Luring for Participation in Illegal Activity
- **More information on:** Citizen's Guide to Laws on Sexual Abuse
- **More information on:** Citizen's Guide to Laws on International Parental Kidnapping
- **More information on:** Citizen's Guide to Laws on Child Support

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U.S. Department of Justice, Criminal Division ° Child Exploitation and Obscenity Section (CEOS)
1400 New York Avenue, 6th Floor ° Washington, D.C. 20530

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TITLE 18 > PART I > CHAPTER 110 > § 2256

§ 2256. Definitions for chapter

For the purposes of this chapter, the term—

(1) "minor" means any person under the age of eighteen years;

(2)

(A) Except as provided in subparagraph (B), "sexually explicit conduct" means actual or simulated—

(i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(ii) bestiality;

(iii) masturbation;

(iv) sadistic or masochistic abuse; or

(v) lascivious exhibition of the genitals or pubic area of any person;

(B) For purposes of subsection 8(B) [1] of this section, "sexually explicit conduct" means—

(i) graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or lascivious simulated sexual intercourse where the genitals, breast, or pubic area of any person is exhibited;

(ii) graphic or lascivious simulated;

(I) bestiality;

(II) masturbation; or

(III) sadistic or masochistic abuse; or

(iii) graphic or simulated lascivious exhibition of the genitals or pubic area of any person;

(3) "producing" means producing, directing, manufacturing, issuing, publishing, or advertising;

(4) "organization" means a person other than an individual;

(5) "visual depiction" includes undeveloped film and videotape, data stored on computer disk or by electronic means which is capable of conversion into a visual image, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format;

(6) "computer" has the meaning given that term in section 1030 of this title;

(7) "custody or control" includes temporary supervision over or responsibility for a minor whether legally or illegally obtained;

(8) "child pornography" means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where—

(A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

(B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or

(C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

(9) "identifiable minor"—

(A) means a person—

(i)

(I) who was a minor at the time the visual depiction was created, adapted, or modified; or

(II) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

(ii) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(B) shall not be construed to require proof of the actual identity of the identifiable minor.

(10) "graphic", when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted; and

(11) the term "indistinguishable" used with respect to a depiction, means virtually indistinguishable, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct. This definition does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults.

[1] So in original. Probably should be "(8)(B)".

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Child Actors – What's All The Fuss?

The Coogan Law

By

Bruce D. Sires

BEVERLY HILLS BAR ASSOCIATION

Entertainment Law Section

April 20, 2011

Background

The so-called Coogan Law was enacted in the 1930's to protect the movie studios who were hiring large numbers of minors. The studios did not want to create "stars" and lose the value of their investment if the minor backed out of the contract. This concern is due to the fact that although minors have the power to enter into most contracts just as an adult may, minors also have the right and power to disaffirm any contract into which they enter, and they may do so not later than the expiration of a reasonable period of time after attaining majority. (See, Family Code § 6751) In other words, when dealing with minors special precautions are needed to protect the adults in the transaction. The Coogan Law can now be found at Family Code §§ 6750-6753. Originally the statute merely provided a procedure whereby the studios could have the contract approved by the court and thereby prevent the minor from disaffirming. Overlooked were the consequences to the minors, because the earnings of a minor belonged to the minor's parents, and the income was taxable to the minor.

The Coogan Law was enacted to quell the public outcry, due to newspaper publicity of the plight of Jackie Coogan, a very popular child actor. Jackie's mother spent nearly all of his earnings and he ended up destitute, and worst of all, his mother had every right to do so! At that time the minor's earnings were the property of his or her parents and he or she only received what the parents gave him or her, if anything. The law was amended to require the court, which was asked to approve the minor's contract, to set aside a percentage of the minor's earnings in a separate blocked account for the minor, which could not to be touched, except upon prior court order or upon withdrawal by the minor upon attaining majority ("Coogan Trust Account"). The percentage, within limits, was discretionary with the court. However, until January 1, 2000, a minor's earnings continued to belong to the minor's parents, so the abuse by some parents was allowed to persist, and where the minor's contract was not court approved, no Coogan Trust Account was required to be established.

In 1999, sweeping changes were made to the Coogan Law. For the first time, whether the contract is approved by a court or not, 100% of the minor's gross earnings under the contract belong to the minor, and the minor's employer is required to set aside the earnings in a Coogan Trust Account.

Outline of the Current Coogan Law

I. Covered Contracts

A. Contracts with an unemancipated minor entered into after December 31, 1999.

B. The contract requires the minor to do any of the following:

1. Render artistic or creative services for compensation, including to a loan-out corporation.

2. Purchase or otherwise secure, sell, lease, license or otherwise dispose of literary, musical or dramatic properties, or use of a person's likeness, voice recording, performance, or story of or incidents in his or her life, either tangible or intangible, or any rights therein for use in motion pictures, television, the production of sound recordings in any format now known or hereafter devised, the legitimate or living stage, or otherwise in the entertainment field.

3. Render services as a participant or player in a sport.

II. "Employer"

A. The person or entity who directly employs the minor.

B. If the minor's services are rendered through a third party individual or a loan-out company, the person or entity to whom the minor's services are provided by the third party or loan-out is the employee.

C. If the minor renders services as an extra, background performer, or in a similar capacity through a casting agency, the agency is the employer.

III. "Gross Earnings"

A. The total compensation payable under the contract, to the minor, or to the loan-out company.

B. Where the minor performs services as a musician, singer, songwriter, musical producer, or arranger, gross earnings includes advances paid to the minor, or loan-out, excluding deductions for advances or other expenses incurred by the employer.

IV. Coogan Trust Account

A. The minor's employer must place into a Coogan Trust Account, 15% of the minor's gross earnings under the contract. Where court approval of the contract is sought, the order must require the set aside.

B. The minor's parent or legal guardian is required to provide to the employer:

1. A certified copy of the minor's birth certificate.

2. A copy of the order appointing a legal guardian for the minor.

3. At least one of the minor's parents must be appointed as trustee of the Coogan Trust Account, or any other person appointed by the court order approving the contract.

4. Within 10 business days after commencing employment, the trustee of the Coogan Trust Account must provide a statement to the employer and the employer must provide the trustee with a receipt for the statement. The trustee's statement must be made under penalty of perjury, and include the following:

(a) The name, address and telephone number of the financial institution where the Coogan Trust Account has been opened.

(b) The name and account number of the Coogan Trust Account.

(c) The names of the minor and the trustee or trustees.

(d) Any other information needed by the employer to make deposits into the Coogan Trust Account.

(e) Attached to the statement shall be a true and correct copy of any information provided by the financial institution confirming the creation of the Coogan Trust Account, including but not limited to an account agreement, account terms, passbook, or other writings.

(f) The employer shall deposit the 15% within 15 days after receiving the trustee's statement, the minor's birth certificate and, if there is a legal guardian, a copy of the document appointing the guardian and until deposited the employer holds the funds for the benefit of the minor. The employer shall also notify, in writing, the financial institution that the funds are subject to Family Code § 6753, and the court retains jurisdiction over the account.

(g) The minor's parents are under a continuing duty to notify the employer of any changes in the Coogan Trust Account or the order requiring the employer's deposits.

(h) If the minor's parents fail to open a Coogan Trust Account or fail to give provide the information to the employer, then the employer is required to distribute the 15% held for the minor to The Actors' Fund of America, as trustee of those funds under Family Code §§ 6752(b)(9)(A)-(B) and 6753.

5. The financial institution which holds the Coogan Trust Account must be in California and insured by the FDIC, SPIC, NCIUSIFM, or a company registered under the Investment Company Act of 1940, and the trustee has the duty to ensure that the funds remain in such a Coogan Trust Account and to account for those funds.

6. Upon attaining the age of 18, the former minor may withdraw the funds from the Coogan Trust Account without further court order.

V. Minor's Contracts Not Subject to Family Code §§ 6750-6753

A. All other contracts with a minor may be disaffirmed by the minor at any time and within a reasonable period of time after attaining majority.

B. Common contracts subject to disaffirmance:

1. A settlement of disputes between employer, minor and others.

2. A minor's agreements to employ managers, accountants, attorneys, producers, etc.

VI. Who's Responsible for the Other 85% of the Minor's Gross.

VII. What Other Protections are Available to Assure the Best Interests of the Minor are Primary?

The Best Kept Secret In Legal Hollywood: Guardianship provisions of the probate law protects children in the entertainment and sports world
By Bruce Sires (*Reprint of article originally written for and published by California Bar Journal, June 2002*)

Children have been earning large sums in entertainment and sports for years and only a small fraction of those children and their parents have handled their finances as required by the laws which protect a child with money. This article deals only with children who enter into contracts described in Family Code §6750. Generally speaking, this includes children who are employed in any aspect of film, theater, television, sports, radio, music or literary industries. Interestingly, it does not include models.

Up until Jan. 1, 2000, the earnings of these children belonged to their parents and were not the child's money. Only the money set aside in Coogan accounts, if any, was the child's money. However, in the case of many contracts which were court-approved, the parents were required by the court to relinquish their rights to the child's earnings, and under those contracts the child's earnings did belong solely to the minor.

Production companies seek court approval of minor's contracts so that the child cannot exercise his or her legal right to disaffirm the contract before attaining the age of majority, currently age 18. Prior to Jan. 2, 2000, the minor owned his or her earnings under such contracts which included this clause. Under those contracts and all minor's contracts after that date, whether or not court approved, 100 percent of the minor's earnings now belong to the minor.

Many people thought that the required set aside for children whose contracts were approved by the courts better protected those children than those whose contracts were not court-approved; so the amendments to the Coogan law effective on Jan. 1, 2000, have been believed to better protect such children by expanding the set aside to all such contracts. However, it only is a small fraction of the child's money set aside. Prior to 2000, 25 percent of a minor's earnings from a court- approved contract were generally set aside for the minor; in some cases 30 percent was set aside. Today, only 15 percent is required to be set aside, without regard to court approval (Family Code §6752).

Earnings belong to the minor

However, the real advantage in protecting children and their earnings is that all of their earnings belong to them and the laws which protect these minors and those third parties that deal with these minors are the guardianship laws under the California Probate Code.

Where a minor is to be paid money, it is incumbent upon the minor's parents, who are entitled to receive the money under Family Code §6750, to seek authority from the Probate Court under the guardianship law to determine how the money is to be held, managed, invested and spent (Probate Code §§3411 and 3413). This article assumes that no guardianship exists. The minor's funds include all monies belonging to the minor plus any amount to be paid to him or her including monies which are to be set aside under the Coogan law. It does not include funds held under a custodianship under the California Uniform Transfers to a Minor Act (CUTMA) (Probate Code §3400).

Payments to parents

Depending upon the amount of the minor's funds, the court may authorize payments to the parents under the following circumstances: (1) Appointment of a guardian of the minor's estate to whom all monies are paid (Probate Code §3413); (2) Payment to a custodianship under CUTMA (Probate Code §3413(b)); (3) Payment to the county treasurer (§3413(a)); (4) If the minor's funds do not exceed $20,000, the court may authorize and determine an investment that is in the best interest of the minor (Probate Code §3413(b));

(5) If the minor's funds do not exceed $5,000, the payment may be made directly to the parents who must account to the minor for the funds when he or she attains age 18 ((Probate Code §3413(d)).

Where the minor has the prospect of earning large sums, the court is most likely to require the creation of a guardianship. In fact, with all of the various legal arrangements in which the minor may become involved, the guardianship is the recommended course of action because it protects both the minor and all third parties with whom the child will be dealing.

Without a guardianship, all of the minor's dealings with third parties may be disaffirmed by the minor ((Family Code §6710). There is no authority for anyone to make agreements on the minor's behalf, except for the guardian of the estate of the minor or the minor himself or herself ((Family Code §6700). The agreements and actions of the guardian of the estate may not be disaffirmed. The minor's power to contract is limited by Family Code §6701 and his or her right to disaffirm is limited by Family Code §§6711-6713. A minor has no right or power to delegate his or her authority to anyone (Family Code §6701(a)). Only the probate court has that authority, which the court may delegate to a guardian of the minor's estate by issuing letters of guardianship to the guardian.

What other financial dealings are we talking about where all parties will want to be assured that the agreements are legally binding and not voidable by anyone? At its simplest, this includes the hiring and payment of attorneys, business managers, talent agents, sports agents, literary agents, insurance agents, etc. Many of these arrangements have been considered impractical or impossible because these contracts cannot be approved by the court in a minor's contract proceeding. However, they may be entered into with the minor's guardian of the estate.

Many minors are employed for long periods of time at a location far from home. For example, a minor from Chicago may be employed in Los Angeles on a weekly sitcom. The minor's parents may need a home and car while residing here, but while the minor is financially able, the parents' wealth and earnings are nowhere near being able to manage these things. In Los Angeles County, the court generally requires the purchase of real estate for cash. A guardian of the minor's estate may, with court authority, purchase the automobile and a home. A minor may not purchase real estate other than through a guardianship.

Often for tax planning purposes a performer will establish a personal service corporation to lend his or her services to a production company. To the extent the minor can legally do the transactions involved, he or she may still disaffirm. A guardian of the estate, however, may form the corporation and enter into agreements with attorneys, business managers, the minor and the production company, appoint directors and officers, etc. There is no issue of disaffirmance.

Binding contract

Music industry managers may enter into a binding contract with the minor's guardian. The guardian can enter into a binding contract with the music industry manager protecting both the minor and the manager.

A guardianship of the estate of a minor is commenced by filing a Petition or Appointment of Guardian of Minor with the Probate Court (Probate Code §1500) in the county in which the minor resides, or "such other county as may be in the best interests of the proposed ward" (Probate Code §2201).

A guardianship of the estate may be commenced in California for a nonresident minor in the county in which the minor is temporarily living where he or she has property, or where the court determines is in the minor's best interests (Probate Code §2202). In Los Angeles County, if the natural parents of the minor seek appointment as guardians, the matter may be heard ex parte, that is, without a noticed hearing (Los

Angeles Superior Court, Rules of Court, Chapter 10, Probate Dept. Rule, §10.157(a)).

Otherwise, notice of the hearing on the guardianship must be given to the minor, if over age 12, and to all relatives within the second degree, that is grandparents, parents, brothers, sisters, children and grandchildren; and to the persons having custody of the minor, if not the parents. Notice to parents, the minor and persons having custody of the minor must be given by personal services and to all others by mailed notice of hearing, at least 15 days before the hearing date (Probate Code §1511). Generally, the guardian must be bonded to the extent of the value of tangible and intangible personal property and one year's income from all sources. If the minor's Coogan account is in a blocked account, those funds and investments will not be bonded (Probate Code §2320 et. seq.).

The guardian must file an Inventory and Appraisal of all of the minor's assets on the date letters of guardianship are issued (Probate Code §2610(a)) and must file an accounting of the minor's income and disbursements and report to the court all material transactions during the first year of the guardianship and biennially thereafter (Probate Code §2620(a)). This protects the minor from misuse of funds by the guardian and protects the guardian by getting court ratification of all disclosed activities.

Certain transactions of the guardian must receive court approval prior to taking those actions. The most common of these actions include the following: (1) The purchase of a residence (Probate Code §2571) or any other property (Probate Code §2570); (2) The sale of real or personal property (Probate Code §2540 et seq.); (3) Refinancing of real property, for example, to reduce the interest rate and payments or to cash out some equity (Probate Code §2550 et seq); and (4) Payment of compensation to the guardian and attorneys for the guardian (Probate Code §2640 et seq.)

In all matters of a guardianship of a minor's estate, the probate courts' overriding point of view is that if the minor's parents are living, it is their obligation to support, maintain and educate their children and therefore the minor's estate must be preserved for the minor until he or she attains majority.

Thus, the wisest path is to have the court approve in advance all transactions which are unusual for the "ordinary" family situation, particularly when they involve substantial expenditures of the minor's estate. It would not be prudent to take undue risks with the minor's estate given all the fiduciary relationship among the minor, his or her parents and their legal and financial counselors.

The most significant change in the law to protect minors in the entertainment, literary and sports businesses was the transfer of ownership of their earnings from their parents to themselves. With that single change, the set aside provisions of Family Code §6750 et seq. became insignificant in the overall protection of the minor's earnings.

That change shifted the protection of 100 percent of the minor's earnings to the guardianship provisions of the Probate Code. These procedures provide mandatory protection not only to the minor but to all those with whom the minor deals.

• *Bruce D. Sires is a partner with Valensi Rose & Magaram in Los Angeles, where he specializes estate planning, tax planning, tax litigation and probate, conservatorship and guardianship matters, including related litigation. He is a certified specialist in estate planning, trust and probate law.*

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Court Ratification Process

For

Child Actor Employment Contracts

Prepared by Anthony J. Hanna, Esq.

A. **Law:** See California Family Code § 6750 et seq. or California Labor Code § 1700.37.

B. **Purpose:** The process benefits both parties (i.e., Producer ratifies because it's the morally right thing to do to protect the Child Actor; Producer *really* ratifies because the bottom line is, it is in the Producer's best interest for the economic security of the film.)

Parties: Generally, Petitioner is Employer and Respondent is Child Actor and Parent/Guardian Ad litem. If Child Actor has loan-out corporation, follow special language requirements for loan-out as Respondent. Note the jurisdictional requirements of Labor Code 1700.37 relate to contracts that may only be approved by the superior court of the county where the minor resides or is employed. As a practical note, if nexus to California is needed and neither Employer nor child (or loan-out) resides or does business in California, consider a California distributor as Real-Party-In-Interest.

C. **Effect of Ratification:**

California Labor Code § 1700.37 states:

A minor cannot disaffirm a contract, otherwise valid, entered into during minority, either during the actual minority of the minor entering into such contract or at any time thereafter, with a duly licensed talent agency as defined in Section 1700.4 to secure him engagements to render artistic or creative services in motion pictures, television, the production of phonograph records, the legitimate or living stage, or otherwise in the entertainment field including, but without being limited to, services as an actor, actress, dancer, musician, comedian, singer, or other performer or entertainer, or as a writer, director, producer, production executive, choreographer, composer, conductor or designer, the blank form of which has been approved by the Labor Commissioner pursuant to Section 1700.23, where such contract has been approved by the superior court of the county where such minor resides or is employed.

Such approval may be given by the superior court on the petition of either party to the contract after such reasonable notice to the other party thereto as may be fixed by said court, with opportunity to such other party to appear and be heard.

California Family Law Code Section 6750 describes the types of entertainment contracts which are covered by the following statutes.

California Family Law Code Section 6751 provides that a contract may not be disaffirmed on the ground of minority if it was approved by the superior court of the proper county, after reasonable notice and an opportunity to be heard.

D. **Coogan Component:**

California Family Code Section 6752, also known as the Coogan Law, requires that 15 percent of the minor's gross earnings pursuant to a contract of a type described in Section 6750, whether or not it is court approved, shall be set aside by the minor's employer in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with Section 6753.

California Family Code Section 6753 sets forth the provisions of the Coogan trust requirements to be established for the purpose of preserving for the benefit of the minor the portion of the minor's gross earnings set aside pursuant to Section 6752.

E. **Order Approving Minor's Contract in Arts, Entertainment, and Professional Sports** *[Family Code § 6750 et seq.*

***L.A Superior Court Local Rule 14.8*:**
When drafting the proposed order, comply with Local Rule 14.8 when the minor is the contracting party. Note that the caption of the proposed order reflects that the minor is appearing by and through a guardian ad litem. The petition should reflect the parties in the same way as the proposed order, and the minor may appear through only one guardian ad litem (although the proposed order may name more than one trustee of the blocked account). The first part of the proposed order is also a checklist of the documents required to be filed in order to obtain court approval of the contract. Note that the requirements of Family Code 6751(a) are jurisdictional, i.e., the contract may only be approved by the superior court of the county in which the minor resides or is employed or in which any party to the contract has its principal office in California for the transaction of business.

Note: New changes posted by L.A. Superior Court Dept 2 as of February 2011 to the Order Approving Contract of Minor, Per Department 2: *following language should be included in the proposed Order submitted to the Court and accompanying declaration & quitclaim of guardian:*

> [Form Proposed Order page 2, section D should now include]: "[IF THE MINOR IS NOT A RESIDENT OF CALIFORNIA:] The Minor is a resident of [FOREIGN STATE OR COUNTRY], and the Minor's parent or parents or guardian, as the case may be, have irrevocably and perpetually released, relinquished and quitclaimed to the Minor any interest they may have in and to all monies payable under the Contract."

Note: Parents/Guardians of minors residing outside California must provide a quitclaim as indicated in this order.

Similar Order Exists For Approving Minor's Contract When Minor Has A Loan Out Corp: Same order as set forth in Local Rule 14.8, however, minor's loan out corporation will be the contracting party. *(*See Court approved minor loan out compensation provisions, attached as exhibit to this Memo.).*

Note: Verify minor's loan-out documentation is in good order prior to submission to Court. A common reason for Rejection of Petition is failure of Minor's loan-out to include adequate protections of Minor. Attorneys that create loan-outs for minors must be aware of the proper verbiage that will be accepted by the Court. The key language is set forth in Exhibit A.

Also ensure all accompanying documents are properly attached to the Petition at the time the proposed order is filed. The first part of the court order sets forth a checklist of the documents required to be filed in order to obtain court approval of the contract.

F. **Amendment to Prior Order Approving Minor's Contract:**
When an initial proposed order is returned because it is determined defective by the Court, the Court will generally advise you as to what amendments need to be made to permit ratification to occur. The website of the Clerk of L.A. Superior Court Dept. 2 has a number of common amendments to prior orders with approved language that may be applicable depending on the reason for the rejection.

G. **Filing the Petition and Proposed Order:**

Case Cover Sheet & Filing Fee: In addition to what is listed in the order, you will need to attach a Family Law Case Cover Sheet to the petition (check the box for "Approval of Minor's Contract"). For the safety of the minors, good practice dictates that you do not disclose the residence address of a minor in any public document filed with the court. Petitions must be filed in the Central District at the Family Law Filing Window in Room 426 and accompanied by a proposed order, a copy of the petition and proposed order for your records, a self-addressed postage paid envelope, and **$395.00 filing fee.**

Los Angeles Superior Court Rule 14.22 states: All petitions for the confirmation of Minor's Contracts under Family Code section are to be filed in Department 2. All such petitions shall have attached as exhibits the underlying contract for which confirmation is sought. The petition shall be accompanied by a proposed order. Department 2 shall have continuing jurisdiction over these petitions and the funds blocked under orders issued until the funds are released. Petitions to amend prior orders or to switch investments or banks shall be supported by adequate declarations setting forth the reason and necessity of the requested actions.

Supervising Judge: Commencing January 1, 2008, the Honorable Marjorie Steinberg has presided in Dept. 2 as the Supervising Judge of the Family Law Department of the Los Angeles County Superior Court. Barbara Rice is designated research attorney for L.A. Superior Court Dept. 2 matters.

Petition Approving Minor's Contract: The proposed court order should be filed as an exhibit which is part of the Petition to Approve Minor's Contract. This Petition is usually three pages with reference to the following additional exhibits, aside from the proposed order: birth certificate, employment contract (and where applicable, loan out contract) and Stipulation of Waiver of Notice.

H. **Stipulation of Waiver of Notice by Guardian ad litem and Petitioner to be heard:** To avoid court appearances by petitioner and respondent this stipulation should be part of the Petition.

I. **Upon Receiving Court Order Notice & Attorney's Declaration To Court Is Needed:** After order is received, a letter in the form approved by the Court is sent to the Parent/Guardian notifying them of the Court Order and the Parent/Guardian's obligations concerning the same; An attorney's declaration that the letter has been sent to parents with language from CFCS 6752(e) re: the bank account is then filed with the Court thereby concluding the ratification process.

To determine the status of a pending petition or application, you may visit the official web site of the Los Angeles County Superior Court. Choose "Case Summary" under "Family," and type in the case number. You do not need to choose a filing court.

J. **For Release of Coogan Funds**

Release of Funds Before Minor Turns 18:

Applications for release of funds to the minor after reaching majority shall be accompanied by proof that the minor has reached the age of eighteen or is emancipated. The court shall assess a fee for processing applications for release of funds from blocked minors' accounts. L.A Superior Court Dept. 2 has an approved form that is to be used to make requests for a release of funds from a Coogan Account before the minor attains the age of 18 or becomes emancipated. This form will need to be filed with a Family Law Case Cover Sheet, Declaration Form, Income and Expense Forms, and Proposed Order For Withdrawal Of Funds From Blocked Account. Again, for the safety of the minor, redact the address of the minor on any documents you submit to the court (e.g., bank statement, copy of driver's license.

For Release of Funds After Minor Turns 18/Application To Terminate Minor's Blocked Account: For earnings blocked pursuant to a contract entered into before January 1, 2000, Dept. 2

has an approved form that serves as an application to terminate the account if the order did not provide for automatic release of funds upon the minor's eighteenth birthday. For the safety of the minor, redact the address of the minor on any documents you submit to the court (e.g., bank statement, copy of driver's license).

EXHIBIT A

SAMPLE ESSENTIAL PROVISION WHICH MUST APPEAR IN LOAN-OUT EMPLOYMENT AGREEMENT FOR MINOR

(As recommended and approved by Los Angeles Superior Court, Department 2)

. . .

On condition that Employee fully performs all of Employee's obligations and agreements hereunder, and in full consideration of the services to be rendered and rights granted and agreed to be granted to Employer hereunder, Employer agrees to pay Employee the following:

(a) As basic compensation, one hundred percent (100%) of Employer's income directly attributable to Employee's efforts on behalf of Employer. Such basic compensation shall be payable in accordance with Employer's payroll practices. For purposes of the foregoing, "Employer's income" shall be the total income received by Employer as a result of Employee's services hereunder less any required taxes applicable thereto payable by Employer, contributions to any pension or profit sharing plans for the benefit of Employee and expenses payable to, for or on behalf of Employee as set forth herein. Employer shall set aside in a trust account for the benefit of Employee such amounts as are required by law or court order to be set aside for Employee due to the fact that Employee is a minor.

(b) Employer agrees to pay to Employee proper allowance or reimbursement for all reasonable expenses incurred by Employee in connection with Employee's services hereunder, it being acknowledged by the parties that the Employee will be expected to incur such expenses which must be substantiated with written receipts evidencing such expenses.

(c) Employee shall be accorded such fringe benefits as the Employer may from time to time provide, which benefits shall not be less than those accorded to Employer's other employees, such as profit sharing plans, pension plans, incentive compensation, health and accident plans, and life insurance for Employee.

(d) Employee authorizes Employer to deduct and pay over from Employee's compensation hereunder such amounts as Employee may be required to pay or contribute by reason of Employee's rendering services under this Agreement, including but not limited to union dues, agents' commissions, managers' fees, legal fees, and union health and pension plan contributions, if any, provided that such expenses are reasonable and are directly related to Employee's employment hereunder. Employer shall also have the right to deduct, withhold and pay over from Employee's compensation hereunder the amounts required to be deducted, withheld and paid over by Employer pursuant to any present or future law, governmental order or regulation requiring the withholding, deducting, and paying over of compensation.

(e) All compensation due to Employee which exceeds all expenses and deductions described in this section shall be for the sole use and benefit of Employee.

. . .

Potential Relevant Provisions of
California Rules of Professional Conduct
When Representing Minors, Parents or Production Companies

Rule 3-100. Confidential Information of a Client.

(A) A member shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) without the informed consent of the client, or as provided in paragraph (B) of this rule.

(B) A member may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the member reasonably believes the disclosure is necessary to prevent a criminal act that the member reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.

(C) Before revealing confidential information to prevent a criminal act as provided in paragraph (B), a member shall, if reasonable under the circumstances: (1) make a good faith effort to persuade the client: (i) not to commit or to continue the criminal act or (ii) to pursue a course of conduct that will prevent the threatened death or substantial bodily harm; or do both (i) and (ii); and (2) inform the client, at an appropriate time, of the member's ability or decision to reveal information as provided in paragraph (B).

(D) In revealing confidential information as provided in paragraph (B), the member's disclosure must be no more than is necessary to prevent the criminal act, given the information known to the member at the time of the disclosure.

(E) A member who does not reveal information permitted by paragraph (B) does not violate this rule.

[Rule 3-100 DISCUSSION] Duty of confidentiality. Paragraph (A) relates to a member's obligations under Business and Professions Code section 6068, subdivision (e)(1), which provides it is a duty of a member: "To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client." A member's duty to preserve the confidentiality of client information involves public policies of paramount importance. (*In Re Jordan* (1974) 12 Cal.3d 575, 580 [116 Cal.Rptr. 371].) Preserving the confidentiality of client information contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld. Paragraph (A) thus recognizes a fundamental principle in the client-lawyer relationship that, in the absence of the client's informed consent, a member must not reveal information relating to the representation. (See, e.g., *Commercial Standard Title Co. v. Superior Court* (1979) 92 Cal.App.3d 934, 945 [155 Cal.Rptr.393].)

Narrow exception to duty of confidentiality under this Rule. Notwithstanding the important public policies promoted by lawyers adhering to the core duty of confidentiality, the overriding value of life permits disclosures otherwise prohibited under Business & Professions Code section 6068(e), subdivision (1). Paragraph (B), which restates Business and Professions Code section 6068, subdivision (e)(2), identifies a narrow confidentiality exception, absent the client's informed consent, when a member reasonably believes that disclosure is necessary to prevent a criminal act that the member reasonably believes is likely to result in the death of, or substantial bodily harm to an individual. . . .

No duty to reveal confidential information. Neither Business and Professions Code section 6068, subdivision (e)(2) nor this rule imposes an affirmative obligation on a member to reveal information in order to prevent harm. (See rule 1-100(A).) A member may decide not to reveal confidential information. Whether a member chooses to reveal confidential information as permitted under this rule is a matter for the individual member to decide, based on all the facts and circumstances, such as those discussed in paragraph [6] of this discussion.

Deciding to reveal confidential information as permitted under paragraph (B). Disclosure permitted under paragraph (B) is ordinarily a last resort, when no other available action is reasonably likely to prevent the criminal act. Prior to revealing information as permitted under paragraph (B), the member must, if reasonable under the circumstances, make a good faith effort to persuade the client to take steps to avoid the criminal act or threatened harm. . . [6 Factors are listed by the CRPC Discussion to Rule 3-100, among the six factors is: *"whether the prospective harm to the victim or victims is imminent in deciding whether to disclose the confidential information. However, the imminence of the harm is not a prerequisite to disclosure. . ."*]. . .

Counseling client or third person not to commit a criminal act reasonably likely to result in death of substantial bodily harm. Subparagraph (C)(1) provides that before a member may reveal confidential information, the member must, if reasonable under the circumstances, make a good faith effort to persuade the client not to commit or to continue the criminal act, or to persuade the client to otherwise pursue a course of conduct that will prevent the threatened death or substantial bodily harm, or if necessary, do both. . . .

Informing client of member's ability or decision to reveal confidential information under subparagraph (C)(2) [*See CRPC 3-100 for full discussion*] . . .

Avoiding a chilling effect on the lawyer-client relationship. [*See CRPC 3-100 for full discussion*] . . .

Informing client that disclosure has been made; termination of the lawyer-client relationship. When a member has revealed confidential information under paragraph (B), in all but extraordinary cases the relationship between member and client will have deteriorated so as to make the member's representation of the client impossible. Therefore, the member is required to seek to withdraw from the representation (see rule 3-700(B)), unless the member is able to obtain the client's informed consent to the member's continued representation. . . .

Other consequences of the member's disclosure. Depending upon the circumstances of a member's disclosure of confidential information, there may be other important issues that a member must address. For example, if a member will be called as a witness in the client's matter, then rule 5-210 should be considered. Similarly, the member should consider his or her duties of loyalty and competency (rule 3-110).

Other exceptions to confidentiality under California law. Rule 3-100 is not intended to augment, diminish, or preclude reliance upon, any other exceptions to the duty to preserve the confidentiality of client information recognized under Cal. law.

Rule 3-210. Advising the Violation of Law.

A member shall not advise the violation of any law, rule, or ruling of a tribunal unless the member believes in good faith that such law, rule, or ruling is invalid. A member may take appropriate steps in good faith to test the validity of any law, rule, or ruling of a tribunal.

Rule 3-310. Avoiding the Representation of Adverse Interests.

(A) For purposes of this rule: (1) "Disclosure" means informing the client or former client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client or former client; (2) "Informed written consent" means the client's or former client's written agreement to the representation following written disclosure; (3) "Written" means any writing as defined in Evidence Code section 250.

(B) A member shall not accept or continue representation of a client without providing written disclosure to the client where: (1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or (2) The member knows or reasonably should know that: (a) the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and (b) the previous relationship would substantially affect the member's representation; or (3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by the resolution of the matter; or (4) The member has or had a legal, business, financial, or professional interest in the subject matter of the representation.

(C) A member shall not, without the informed written consent of each client: (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

(D) A member who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients, without the informed written consent of each client.

(E) A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

(F) A member shall not accept compensation for representing a client from one other than the client unless: (1) There is no interference with the member's independence of professional judgment or with the client-lawyer relationship; and (2) Information relating to representation of the client is protected as required by Business and Professions Code section 6068, subdivision (e); and (3) The member obtains the client's informed written consent, provided that no disclosure or consent is required if: (a) such nondisclosure is otherwise authorized by law, or (b) the member is rendering legal services on behalf of any public agency which provides legal services to other public agencies or the public.

[Rule 3-310 DISCUSSION] Rule 3-310 is not intended to prohibit a member from representing parties having antagonistic positions on the same legal question that has arisen in different cases, unless representation of either client would be adversely affected. Other rules and laws may preclude making adequate disclosure under this rule. If such disclosure is precluded, informed written consent is likewise precluded. (See, e.g., Business and Professions Code section 6068, subsection (e).) Paragraph (B) is not intended to apply to the relationship of a member to another party's lawyer. Such relationships are governed by rule 3-320. Paragraph (B) is not intended to require either the disclosure of the new engagement to a former client or the consent of the former client to the new engagement. However, both disclosure and consent are required if paragraph (E) applies. While paragraph (B) deals with the issues of adequate disclosure to the present client or clients of the member's present or past relationships to other parties or witnesses or present interest in the subject matter of the representation, paragraph (E) is intended to protect the confidences of another present or former client. These two paragraphs are to apply as complementary provisions. Paragraph (B) is intended to apply only to a member's own relationships or interests, unless the member knows that a partner or associate in the same firm as the member has or had a relationship with another party or witness or has or had an interest in the subject matter of the representation.

Subparagraphs (C)(1) and (C)(2) are intended to apply to all types of legal employment, including the concurrent representation of multiple parties in litigation or in a single transaction or in some other common enterprise or legal relationship. Examples of the latter include the formation of a partnership for several partners or a corporation for several shareholders, the preparation of an ante-nuptial agreement, or joint or reciprocal wills for a husband and wife, or the resolution of an "uncontested" marital dissolution. In such situations, for the sake of convenience or economy, the parties may well prefer to employ a single counsel, but a member must disclose the potential adverse aspects of such multiple representation (e.g., Evid. Code, §962) and must obtain the informed written consent of the clients thereto pursuant to subparagraph (C)(1). Moreover, if the potential adversity should become actual, the member must obtain the further informed written consent of the clients pursuant to subparagraph (C)(2). Subparagraph (C)(3) is intended to apply to representations of clients in both litigation and transactional matters.

There are some matters in which the conflicts are such that written consent may not suffice for non-disciplinary purposes. (See Woods v. Superior Court (1983) 149 Cal.App.3d 931 [197 Cal.Rptr. 185]; Klemm v. Superior Court (1977) 75 Cal.App.3d 893 [142 Cal.Rptr. 509]; Ishmael v. Millington (1966) 241 Cal.App.2d 520 [50 Cal.Rptr. 592].)

. . .

<u>Rule 4-200. Fees for Legal Services.</u>

(A) A member shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee.

(B) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. Among the factors to be considered, where appropriate, in determining the conscionability of a fee are the following: (1) The amount of the fee in proportion to the value of the services performed. (2) The relative sophistication of the member and the client. (3) The novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly. (4) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the member. (5) The amount involved and the results obtained. (6) The time limitations imposed by the client or by the circumstances. (7) The nature and length of the professional relationship with the client. (8) The experience, reputation, and ability of the member or members performing the services. (9) Whether the fee is fixed or contingent. (10) The time and labor required. (11) The informed consent of the client to the fee.

Rule 3-500. Communication.

A member shall keep a client reasonably informed about significant developments relating to the employment or representation, including promptly complying with reasonable requests for information and copies of significant documents when necessary to keep the client so informed.

[Rule 3-500 DISCUSSION] Rule 3-500 is not intended to change a member's duties to his or her clients. It is intended to make clear that, while a client must be informed of significant developments in the matter, a member will not be disciplined for failing to communicate insignificant or irrelevant information. (See Bus. & Prof. Code, §6068, subd. (m).) A member may contract with the client in their employment agreement that the client assumes responsibility for the cost of copying significant documents. This rule is not intended to prohibit a claim for the recovery of the member's expense in any subsequent legal proceeding. Rule 3-500 is not intended to create, augment, diminish, or eliminate any application of the work product rule. The obligation of the member to provide work product to the client shall be governed by relevant statutory and decisional law. Additionally, this rule is not intended to apply to any document or correspondence that is subject to a protective order or non-disclosure agreement, or to override applicable statutory or decisional law requiring that certain information not be provided to criminal defendants who are clients of the member.

Rule 3-600. Organization as Client.

(A) In representing an organization, a member shall conform his or her representation to the concept that the client is the organization itself, acting through its highest authorized officer, employee, body, or constituent overseeing the particular engagement.

(B) If a member acting on behalf of an organization knows that an actual or apparent agent of the organization acts or intends or refuses to act in a manner that is or may be a violation of law reasonably imputable to the organization, or in a manner which is likely to result in substantial injury to the organization, the member shall not violate his or her duty of protecting all confidential information as provided in Business and Professions Code section 6068, subdivision (e). Subject to Business and Professions Code section 6068, subdivision (e), the member may take such actions as appear to the member to be in the best lawful interest of the organization. Such actions may include among others: (1) Urging reconsideration of the matter while explaining its likely consequences to the organization; or (2) Referring the matter to the next higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest internal authority that can act on behalf of the organization.

(C) If, despite the member's actions in accordance with paragraph (B), the highest authority that can act on behalf of the organization insists upon action or a refusal to act that is a violation of law and is likely to result in substantial injury to the organization, the member's response is limited to the member's right, and, where appropriate, duty to resign in accordance with rule 3-700.

(D) In dealing with an organization's directors, officers, employees, members, shareholders, or other constituents, a member shall explain the identity of the client for whom the member acts, whenever it is or becomes apparent

that the organization's interests are or may become adverse to those of the constituent(s) with whom the member is dealing. The member shall not mislead such a constituent into believing that the constituent may communicate confidential information to the member in a way that will not be used in the organization's interest if that is or becomes adverse to the constituent.

(E) A member representing an organization may also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of rule 3-310. If the organization's consent to the dual representation is required by rule 3-310, the consent shall be given by an appropriate constituent of the organization other than the individual or constituent who is to be represented, or by the shareholder(s) or organization members.

[Rule 3-600 DISCUSSION] [1] Rule 3-600 is not intended to enmesh members in the intricacies of the entity and aggregate theories of partnership. [2] Rule 3-600 is not intended to prohibit members from representing both an organization and other parties connected with it, as for instance (as simply one example) in establishing employee benefit packages for closely held corporations or professional partnerships. [3] Rule 3-600 is not intended to create or to validate artificial distinctions between entities and their officers, employees, or members, nor is it the purpose of the rule to deny the existence or importance of such formal distinctions. In dealing with a close corporation or small association, members commonly perform professional engagements for both the organization and its major constituents. When a change in control occurs or is threatened, members are faced with complex decisions involving personal and institutional relationships and loyalties and have frequently had difficulty in perceiving their correct duty. (See People ex rel Deukmejian v. Brown (1981) 29 Cal.3d 150 [172 Cal.Rptr. 478]; Goldstein v. Lees (1975) 46 Cal.App.3d 614 [120 Cal.Rptr. 253]; Woods v. Superior Court (1983) 149 Cal.App.3d 931 [197 Cal.Rptr. 185]; In re Banks (1978) 283 Ore. 459 [584 P.2d 284]; 1 A.L.R.4th 1105.) In resolving such multiple relationships, members must rely on case law.

Rule 3-700. Termination of Employment.

(A) In General. (1) If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission. (2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

(B) Mandatory Withdrawal. A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if: (1) The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or (2) The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or (3) The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.

(C) Permissive Withdrawal. If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because: (1) The client (a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or (b) seeks to pursue an illegal course of conduct, or (c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or (d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or (e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or (f) breaches an agreement or obligation to the member as to expenses or fees; (2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or (3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or (4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or (5) The client knowingly and freely assents to termination of the employment; or (6) The member

believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal. . . .

[Rule 3-700 DISCUSSION] [1] Subparagraph (A)(2) provides that "a member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the clients." What such steps would include, of course, will vary according to the circumstances. Absent special circumstances, "reasonable steps" do not include providing additional services to the client once the successor counsel has been employed and rule 3-700(D) has been satisfied. [2] Paragraph (D) makes clear the member's duties in the recurring situation in which new counsel seeks to obtain client files from a member discharged by the client. It codifies existing case law. (See Academy of California Optometrists v. Superior Court (1975) 51 Cal.App.3d 999 [124 Cal.Rptr. 668]; Weiss v. Marcus (1975) 51 Cal.App.3d 590 [124 Cal.Rptr. 297].) Paragraph (D) also requires that the member "promptly" return unearned fees paid in advance. If a client disputes the amount to be returned, the member shall comply with rule 4-100(A)(2).Paragraph (D) is not intended to prohibit a member from making, at the member's own expense, and retaining copies of papers released to the client, nor to prohibit a claim for the recovery of the member's expense in any subsequent legal proceeding.

Excerpt from The Rutter Group's California Practice Guide: Professional Responsibility, Chapter 3-B; Chapter 7-B (Source: Vapnek et al., Cal. Practice Guide: Professional Responsibility (The Rutter Group 2011) ¶3:67-3:70; ¶7:128-7:128.1 (CAPROFR Ch. 3-B; Ch. 7-B))

[3:67] Acceptance of fee: Payment and acceptance of a fee for services is a strong indicator of an attorney-client relationship. But it may be shown that payment was made for reasons *other* than the attorney's services. Moreover, the person paying the fee is not necessarily the client; i.e., the payor may be acting on behalf of others (*see* ¶ *3:69 ff.*).

[3:68] Not conclusive: The payment of or agreement to pay a fee does *not itself* create the relationship. [*Hecht v. Sup.Ct. (Ferguson)* (1987) 192 CA3d 560, 565, 237 CR 528, 530—both parties found to have attorney-client relationship with lawyer despite fact only one party paid legal fees; *Lasky, Haas, Cohler & Munter v. Sup.Ct. (Getty)* (1985) 172 CA3d 264, 285, 218 CR 205, 218—fact trust assets used to pay legal fees of trustee's attorney did not establish attorney-client relationship between trust beneficiaries and trustee's attorney]

[3:69] Effect of fee payment by third party: Simply paying an attorney's fee does not itself make the payor the attorney's "client." Absent an attorney-client relationship with the payor, the lawyer owes no professional duties to the person paying his or her fees. [*Strasbourger Pearson Tulcin Wolff Inc. v. Wiz Technology, Inc.* (1999) 69 CA 4th 1399, 1404–1405, 82 CR2d 326, 329–330]

[3:70] *Caution* re adverse interests: An attorney is subject to certain conflict of interest restrictions in accepting payment from *nonclients*, and must take care to ensure the payment does not interfere with the attorney's independent professional judgment and that the client's confidences are protected. [See CRPC 3–310(F)(1)(2), *discussed at* ¶ *4:54 ff.*]

[7:128] Disclosure to prevent crime or fraud not involving substantial bodily harm? Generally, in California, there is no broad "whistleblower" exemption around an attorney's duty of nondisclosure: With certain exceptions (e.g., criminal acts reasonably likely to cause death or substantial bodily injury, ¶ *7:137 ff.*), lawyers do not have the right to disclose a client's ongoing crime or fraud. [*People v. Singh* (1932) 123 CA 365, 370, 11 P2d 73, 74; Los Angeles Bar Ass'n Form.Opn. 386 (1980)—perjury of former client; and Los Angeles Bar Ass'n Form.Opn. 436 (1985)—unauthorized practice of law]

[7:128.1] *PRACTICE POINTER:* If you are unable to dissuade the client from engaging in fraudulent or criminal misconduct, you should (and in some instances *must*) withdraw from representation. [CRPC 3–700, *discussed at* ¶ *10:25 ff.*]