

CHAPTER EIGHT

MINORS' CONTRACTS IN THE ENTERTAINMENT INDUSTRY*

Marc Jacobson, Esq.

* This chapter was originally based on a presentation made at a seminar for the New York State Bar Association, "Entering the Entertainment Industry." Copyright 1986, 1988, 1996 Marc Jacobson. The author gratefully acknowledges the assistance of Sarah Bell, Georgetown Law, Class of 2004, in the revision of this chapter.

This chapter discusses the enforceability of minors' contracts in the entertainment industry. Issues relating to minors' contracts are becoming increasingly important, as more and more young people, ranging from infants to 17-year-old rock singers, rappers and actors, are employed in the entertainment industry. Gary Coleman, who earned his fame on the hit television show *Diff'rent Strokes*, made an estimated \$18 million as the star of the show, but was reduced to working a minimum-wage job as a movie set security guard since his parents squandered his fortune. LeeAnn Rimes was 17 when she sued her father for consuming her earnings. And the Olsen twins of *Full House* fame are reportedly worth over \$40 million each. They are the executive producers of their own company, which generated close to \$970 million in revenue in 2002. A non-profit organization called A Minor Consideration has even been formed to support young performers.¹ How does the law address the contracts minors in the entertainment industry enter into? Since most contracts for the employment of minors in entertainment projects are negotiated and signed in New York and California, what follows will focus on those two jurisdictions.

[8.0] I. OVERVIEW

[8.1] A. Basic Common Law

With little exception, an infant does not have the capacity to bind himself or herself by contract. The infant's contracts are voidable at the infant's election, whether executed or executory.² The rationale is that an infant is regarded as not having sufficient capacity to understand and pass upon questions involving contractual rights. Therefore, a person dealing with an infant does so at his or her peril and subject to the right of the infant to avoid the contract. Moreover, and contrary to commonly held beliefs, even approval of the contract by the parent or guardian of an infant does not bind the infant. However, the ratifying party will be bound.³

Common law traditionally held that "where an infant's contract is to his benefit, it is good and binding upon him; when it is to his prejudice, it is void; and when it is of uncertain nature as to benefit or prejudice, it is

1 See <<http://www.minorcon.org/>>.

2 See, e.g., Restatement (Second) of Contracts § 14 (1981) ("Unless a statute provides otherwise, a natural person has the capacity to incur only voidable contractual duties until the beginning of the day before the person's eighteenth birthday.").

3 42 Am. Jur. 2d *Infants* § 58 (1969).

voidable only at the election of the infant.”⁴ The modern view is that an infant’s contract is voidable by the infant, regardless of whether it appears (at least in part) to be beneficial to the infant.⁵ An exception to the infant’s right to void or “disaffirm” a contract, recognized both at common law and today, is that an infant generally may not disaffirm a contract for necessities.⁶ However, contracts relating to an infant’s business dealings generally are not regarded as involving necessities.⁷

[8.2] B. Modern Statutes

In New York, contracts made on or after September 1, 1974, by a person who has attained the age of 18 years may not be disaffirmed on the ground of infancy. Thus, by reverse implication, contracts made by persons prior to the attainment of majority can be disaffirmed on the ground of infancy.⁸ This conclusion is evident as well from the term “infant” being defined by statute as any person who has not reached the age at which law recognizes general contractual capacity.⁹

California’s statutory approach is more direct, stating that “[a]ll persons are capable of contracting, except minors, persons of unsound mind and persons deprived of civil rights.”¹⁰

4 See 66 N.Y. Jur. 2d *Infants* § 7 (1987), and cases cited. See generally Robert A. Martis, Comment, *Children in the Entertainment Industry; Are They Being Protected? An Analysis of the California and New York Approaches*, 8 Loy. Ent. L.J. 25 (1988) (hereinafter “Martis”).

5 66 N.Y. Jur. 2d *Infants* § 7.

6 This rule is codified in § 6712 of the California Family Code:

A contract, otherwise valid, entered into during minority, may not be disaffirmed on that ground either during the actual minority of the person entering into the contract, or at any time thereafter, if all of the following requirements are satisfied:

(a) The contract is to pay the reasonable value of things necessary for the support of the minor or the minor’s family.

(b) These things have been actually furnished to the minor or to the minor’s family.

(c) The contract is entered into by the minor when not under the care of a parent or guardian able to provide for the minor or the minor’s family.

7 42 Am. Jur. 2d *Infants* § 67 (1969).

8 N.Y. General Obligations Law § 3-101 (hereinafter “GOL”). See, e.g., *Scott Eden Mgmt. v. Kavovit*, 149 Misc. 2d 262, 563 N.Y.S.2d 1001 (Sup. Ct., Westchester Co. 1990); N.Y. Arts & Cultural Affairs Law § 35.03(1)(b) (hereinafter “Arts & Cult. Aff. Law”).

9 GOL § 1-202. See, e.g., *Mimoun v. Bartlett*, 162 A.D.2d 506, 556 N.Y.S.2d 705 (2d Dep’t 1990); *General Motors Acceptance Corp. v. Stotsky*, 60 Misc. 2d 451, 303 N.Y.S.2d 463 (Sup. Ct., Suffolk Co. 1969).

10 Cal. Civ. Code § 1556; see Cal. Civ. Code § 1557.

[8.3] II. THE INFANT AS EMPLOYEE

As set forth below, most contracts for minors in the entertainment industry seek to employ them. However, often a professionally successful minor will have an agent or a manager, or both, together with more traditional professional advisors, such as accountants, attorneys, publicists and others. These relationships may give rise to contracts in which the infant is an employer.

[8.4] A. Approval of Minors' Contracts

[8.5] 1. Statutory Authority

An infant's almost unfettered right to disaffirm contracts presents significant problems in the entertainment industry, due to the large number of substantial contracts with infants and the industry's need for certainty in contractual rights in order to facilitate production, distribution, exhibition and exploitation of product. In recognition of this problem, first California and then New York passed legislation providing for court approval of minors' entertainment industry contracts that limit the infant's right of disaffirmance. Although the initial focus of those laws was industry protection, they now contain substantial protection for the infant performers.¹¹

Judicial approval of contracts by infant entertainers is authorized in New York. Such approval applies only to performing artists, such as actors, musicians, dancers and professional athletes.¹² The statute attempts to provide a degree of certainty for parties contracting with infants in the entertainment industry, so that the validity of such contracts is less likely to be the subject of litigation.¹³

In California disaffirmance, on the ground of infancy, of an employment contract to render artistic or creative services is precluded upon judicial approval of the contract.¹⁴

In both New York and California, jurisdiction and the appropriate venue also are prescribed by statute. The capacity of an infant to enter into

11 See Martis, *supra* note 4, at 25-26.

12 Arts & Cult. Aff. Law § 35.03 (formerly GOL § 3-105, until 1983).

13 See *Prinze v. Jonas*, 38 N.Y.2d 570, 381 N.Y.S.2d 824, 345 N.E.2d 295 (1976).

14 Cal. Fam. Code § 6751 (formerly Civ. Code § 36).

an enforceable contract is determined by the law of the place where the contract is made, unless the parties intend that the law of a different place will govern. For example, if an infant signs a contract in New York and New York is the state of the infant's domicile and his or her obligations under the contract are to be fulfilled in New York, then New York law will apply, even though acceptance by the other party, which completes the contract, may take place in another state.¹⁵ If the minor resides in or is employed in California, California law will apply, thus providing the California courts with jurisdiction to approve the contract. If the minor neither resides in nor is employed in California, California law will still apply if any party to the contract has its principal office for the transaction of business in California.¹⁶

[8.6] 2. Procedure

The procedure for court approval of minors' contracts in each jurisdiction is quite different. In New York, the proceeding is commenced by submitting the verified petition of a parent, interested person or relative of the infant on the infant's behalf to the supreme court or (more often) to the surrogate's court in the county in which the infant resides. If the infant is not a resident of the state, the proceeding may be brought in any county in which the infant will be employed under the contract.¹⁷

In California, either the employer or the infant employee petitions the superior court in the county where the infant resides or is employed, or in the county where either party to the contract maintains a principal office for the transaction of business.¹⁸

[8.7] 3. Personal Appearance by Infant at Contract Proceedings

In California, the court may approve the contract upon petition by either party to the contract after notice to the other party and "opportunity to such other parties to appear and be heard."¹⁹ In New York, the infant must "appear" at the proceedings,²⁰ although many contracts are approved

¹⁵ 66 N.Y. Jur. 2d *Infants* § 4.

¹⁶ Cal. Fam. Code § 6751(a) (formerly Civ. Code § 36(a)(2)).

¹⁷ Arts & Cult. Aff. Law § 35.03(4)(a).

¹⁸ See Cal. Fam. Code § 6751(a), (b).

¹⁹ *Id.*

²⁰ Arts & Cult. Aff. Law § 35.03(8)(a).

without a physical appearance by the infant. In both states, the infant may appear by affidavit.

[8.8] 4. Parental Consent

Written acquiescence to minors' contracts must be filed in New York by the parent(s) or other person(s) having custody, unless the court finds the infant is emancipated.²¹ Although often attached to the petition, a parental agreement between the infant, employer and parent(s), providing written acquiescence to the contract by the parent(s), is superfluous and outside of the court's authority to confirm. Similarly, there is no requirement in California for such an agreement prior to confirmation.²² The documents will be accepted by the court, however, and will not void the application.

[8.9] 5. Parties to the Proceeding

In New York, the following persons, upon at least eight days' notice of the hearing,²³ must be made parties to the proceeding to approve the minor's contract (although the same individual will often fall into more than one category):

1. the infant, if over 14 years old,
2. the infant's guardian(s), whether or not appointed or qualified in New York,
3. the parties to the contract (thus including the infant, even if under 14),
4. the infant's parent or parents,
5. any person who has care and custody of the infant,
6. the person with whom the infant resides, and

²¹ Arts & Cult. Aff. Law § 35.03(2)(c). Similarly, in California, emancipated minors may enter binding agreements. Cal. Fam. Code § 7050(e)(2).

²² See generally Robert M. Rosenthal & Leah Fisher, *Confirmation of Minors Employment Contracts (How to, What to, and Why)*, Bev. Hills B.J., Fall 1983 Convention Issue, 263 (hereinafter "Rosenthal & Fisher").

²³ Arts & Cult. Aff. Law § 35.03(4)(b). However, the court may fix a shorter time for notice.

7. the infant's spouse, if it appears that the infant is married.²⁴

In California, the only parties to the proceeding are the employer and the employee—the parties to the contract.²⁵

[8.10] B. Term of the Contract

In New York, a complete copy of the contract must be annexed to the petition. The term of the contract cannot exceed three years from the date of approval, including extensions by option or otherwise. Reasonable covenants and conditions may, however, exceed three years.²⁶ However, if qualified counsel experienced with entertainment industry law and practices represents the infant, such contract may be for a period of not more than seven years.²⁷

In California, a copy of the contract also must be attached to the petition. There is no provision delineating the allowable term of an infant entertainer's employment contract in California.²⁸ However, by statute, the term of any personal service contract may not exceed seven years.²⁹

[8.11] C. Net Earnings Account

In the area of supervising and safeguarding the earnings of a minor, California and New York have recently enacted legislation protecting the earnings of minors.

[8.12] 1. California Requirements

California law requires that 15 percent of a minor's gross earnings pursuant to a contract be set aside by the minor's employer in trust, in an account or other savings plan located in the state of California, and preserved for the benefit of the minor until the minor reaches the age of 18 or is declared emancipated by the courts.³⁰ The minor's parent or guardian

24 *Id.*

25 Cal. Fam. Code § 6751(b).

26 Arts & Cult. Aff. Law § 35.03(2)(d), (5).

27 *Id.*

28 Rosenthal & Fisher, *supra* note 22, at 264.

29 Cal. Lab. Code § 2855.

30 Cal. Fam. Code § 6752(b)(1).

may also request that more than 15 percent of the earnings be set aside.³¹ Previously, a parent's written consent was required with respect to the establishment of an account into which a portion of the minor's earnings is set aside, commonly called a "blocked account."³² Net earnings are all the sums remaining from the minor's gross earnings, after payment of taxes, reasonable support, maintenance, training, agency and manager's commissions, as well as legal fees.³³

A revision to the Coogan Law, originally enacted in 1938, established the 15 percent trust.³⁴ The trust increases a minor's control over his own earnings and protects children and adolescents in cases where their contracts with studios or producers are not reviewed by a court.³⁵ The key changes enacted by CA SB 210, which amends the California Family Code and the California Labor Code, are as follows:

- The new law covers all minors' contracts, not just those approved by the court;
- If a minor is employed or agrees to render services directly for any person or entity, that person or entity shall be considered the minor's employer;
- Employers hiring third-party individuals or personal services corporations (loan-out companies) shall be considered the minor's employer;
- The new law defines the minor's "gross earnings" as the total compensation payable to the minor under the contract or, if the employer hires a loan-out company, the total compensation payable to such a company for the services of the minor;³⁶

31 *Id.*

32 Cal. Fam. Code § 6752(b).

33 Cal. Fam. Code § 6752(c).

34 2003 Cal. Legis. Serv. ch. 667 (S.B. 210) (West) (hereinafter "CA SB 210").

35 *Id.*

36 With respect to contracts where a minor is employed or agrees to render services as a musician, singer, songwriter, musical producer, or arranger only, the minor's "gross earnings" includes the payment of any advances to the minor pursuant to the contract but excludes deductions to offset those advances or other expenses incurred by the employer or loan-out company pursuant to the contract. Cal. Fam. Code § 6750(c)(1).

- Within ten business days of commencing employment, trustee(s) of the funds ordered to be set aside must supply a true and accurate photocopy of the trustee's statement to the minor's employer and, upon receipt of such statement, the employer must provide the parent or guardian with written acknowledgement of such receipt;
- Within 15 business days of receiving the trustee's statement, a copy of the child's birth certificate and, in the case of a guardian, a certified copy of the court's appointment of guardianship, the employer must deposit or disburse 15 percent of the minor's gross income to the trust and provide written notification to the financial institution or company that the funds are subject to section 6753 of the California Family Code;³⁷
- If the parent or guardian fails to establish a trust or if the trustee fails to supply the employer with a true and accurate photocopy of the trustee's statement within 180 days after commencement of employment, then the employer must forward 15 percent of the minor's gross income pursuant to the contract to the Actor's Fund of America (AFA) and, if known, include the minor's social security number, birth certificate, last known address, telephone number, e-mail address, dates of employment, and title of the project. The AFA will then become the minor's trustee and the employer will cease to have any further obligation or duty to monitor or account for the funds;³⁸
- Employment permits issued to minors will be void after ten business days from the date written consent was granted, unless it is attached to a true and correct copy of the trustee's statement, in which case the permit will be valid for a six-month period.

[8.13] 2. New York Requirements

In New York, approval of the contract may be withheld until the parent(s), who may be entitled to the minor's earnings, or the infant, if the infant is entitled to those earnings, consents to set aside a portion of the infant's earnings. If the earnings are set aside, they are placed under the control of a guardian, pursuant to an order of the court. This court order remains in effect until the infant attains majority, or upon further order of

³⁷ In the case of a court order, the employer must provide the financial institution with a copy of the order. Cal. Fam. Code § 6752(b)(5).

³⁸ The employer must also notify the parent, guardian or trustee of such transfer by certified mail to his or her last known address. Cal. Fam. Code § 6752(b)(9)(A). For further discussion of the AFA's obligations with respect to such funds, please refer to CA SB 210.

the court.³⁹ If the infant is emancipated, such an account may still be required. In general, although the court determines the amount (or proportion) to be set aside, it cannot condition its approval upon the infant's or parent(s)' consent to set aside more than one-half of the infant's net earnings.⁴⁰

In fixing the amount to be set aside, consideration typically is given to the financial circumstances of the parent(s) entitled to the infant's earnings, the needs of the parents' other children and the needs of the infant's family if the infant is married.⁴¹ Net earnings are defined in New York as gross earnings less taxes, support, care, education, training, professional management, and reasonable fees and expenses paid in connection with the proceeding, the contract and its performance.⁴² The court designates the bank in which the money is to be placed, which is generally a federally insured savings account. Brokerage accounts are not favored.⁴³

Historically, all funds received on account of the infant's services are deposited into the guardian's account, which is maintained by the guardian and the court. An application to the court is required to release the funds. The guardian, by statute, is required to post a bond, which may be dispensed with if the court so orders.⁴⁴ Further, if the bond is posted, the court may decide to designate itself as a joint tenant on the bank account, in which case the guardian may remove funds for proper purposes, without further application to the court.⁴⁵ Whether or not the funds are held jointly, the guardian must provide the court with an annual accounting of income and expenses.⁴⁶

New York lawmakers also approved The Child Performer and Trust Act of 2003 (CPTA) that mirrors California's new law. The CPTA became effective March 28, 2004 and amends New York's Estates, Powers and

39 Arts & Cult. Aff. Law § 35.03(3)(a).

40 Arts & Cult. Aff. Law § 35.03(3)(b), (8)(c).

41 See Arts & Cult. Aff. Law § 35.03(3)(b), (8)(c).

42 Arts & Cult. Aff. Law § 35.03(3)(c).

43 See N.Y. Surrogate's Court Procedure Act 1708 (hereinafter "SCPA").

44 SCPA 1708(1), (2).

45 See Lipman, McKinney's Practice Commentary, SCPA 1713 (1967).

46 SCPA 1719.

Trusts Law and New York's Arts and Cultural Affairs Law.⁴⁷ This statute will have a significant impact on the amount of funds to be set aside under New York law, but does nothing to change the cumbersome, balkanized and frequently expensive process of securing approval of minors' contracts in New York State.

The CPTA defines a child performer as any child under the age of 18 who agrees to render artistic or creative services for a fee, either directly or through a third-party individual, a loan-out company or an agency or service that provides artistic or creative services (casting agency).

The CPTA provides that within 30 days following the final day of employment, the employer must transfer 15 percent of the minor's gross earnings to the custodian of the minor's trust account. In cases when employment is longer than 30 days, the employer must make the required transfer every payroll period. If the minor's employer has not been notified within 15 days of commencement of employment of the existence of a trust account, or if no such account has been established, then the employer must transfer the required amount along with the minor's name and last known address to the New York State Comptroller for placement into the minor's holding fund. Once transfers have been made to the minor's trust account or the minor's holding fund, the employer will have no further duty under the new law.⁴⁸

The CPTA further provides that once the minor's trust account is established, the minor's guardian or legal custodian must notify the minor's employer of the existence of the account and any additional information required to make transfers. In addition, the custodian of the account shall promptly notify the employer of any change in facts that affect the employer's obligation to set aside funds.

Upon request of the parent, legal guardian or minor's guardian *ad litem*, the custodian may require the employer to transfer more than 15 percent of the gross earnings to the trust account. The CPTA allows the minor's parent or legal guardian to serve as custodian. However, once the trust account balance reaches \$250,000 or more, a trust company must be

47 N.Y. Estates, Powers & Trusts Law 7-7.1 (hereinafter "EPTL"). Please note that the CPTA is not retroactive and applies only to child performers under the age of 18 who become employed on or after March 28, 2004.

48 For further discussion of the State Comptroller's obligations with regard to such funds, please refer to EPTL 7-7.1(2).

appointed as custodian of the account. The child performer upon reaching the age of 18 may terminate such account.

The CPTA contains various employment requirements. In order to possess a child permit in good standing, a child performer must provide evidence each semester to the New York Department of Labor demonstrating that such child is maintaining satisfactory academic performance as determined by the child performer's school of enrollment pursuant to state law.⁴⁹ When a child performer applies for an employment permit, the commissioner shall then inform the child performer of the state's trust requirements with the following notice in bold 12-point type to read as follows:⁵⁰

NEW YORK STATE LAW REQUIRES FIFTEEN PERCENT OF A CHILD PERFORMER'S EARNINGS TO BE PLACED IN TRUST IN ACCORDANCE WITH PART 7 OF ARTICLE 7 OF THE ESTATES, POWERS AND TRUSTS LAW. THE CHILD PERFORMER'S PARENTS OR GUARDIAN MUST ESTABLISH THE CHILD PERFORMER TRUST ACCOUNT TO COMPLY WITH THIS REQUIREMENT. THE CHILD'S PARENTS OR GUARDIAN MUST PROVIDE THE CHILD PERFORMER'S EMPLOYER WITH THE INFORMATION NECESSARY TO TRANSFER THESE MONIES TO THE ACCOUNT. FAILURE TO COMPLY WITH THIS REQUIREMENT WILL PREVENT THE DEPARTMENT OF LABOR FROM RENEWING THE CHILD'S PERMIT TO WORK AS A CHILD PERFORMER.

Any person, agent or officer employing a child performer, either directly or indirectly through a third person, must provide a teacher, who is either certified or has credentials recognized by the state of New York, to such child performer to fulfill the educational requirements pursuant to the education law. Such child performer cannot be declared absent from school while working. No minor having a permit to work issued by the department shall be without educational instruction and unemployed for a period longer than ten consecutive days while the school of enrollment is in session.

⁴⁹ Such permit will expire in six months. N.Y. Labor Law § 151(1) (hereinafter "Lab. Law").

⁵⁰ Lab. Law § 151(1).

Prior to employment of a child performer, every person, agent or officer of any entity employing a child performer must receive a certificate of eligibility to employ such a child from the New York State Department of Labor. The employer must then keep on file all permits and certificates issued. Such files must be made available for inspection by the child performer's school and/or probation officers, the New York State Board of Education, and the Department of Labor. Such certificate must be renewed every three years along with the appropriate documentation by the parent or legal guardian of the required trust account. If the commissioner finds that a child performer's employer has violated any provision, rule or regulation, the commissioner may assess a civil penalty which must be paid to the commissioner and placed into a fund known as the "child performer's protection fund."

The new legislation establishes the child performer's protection fund, which consists of the revenues received pursuant to article 4-A of the Labor Law, part seven of article seven of the Estates, Powers and Trusts Law, and all other monies appropriated, credited or transferred from any other fund or source pursuant to law. Monies of the fund, which are held in the joint custody of the state comptroller and the commissioner of taxation and finance, will be used by the commissioner of labor solely for the purpose of administering article 4-A of the Labor Law.

The new law further establishes, also in the joint custody of the state comptroller and the commissioner of taxation and finance, a fund known as the "child performer's holding fund." Such fund shall consist of revenues received and interest accrued pursuant to part seven of article seven of the Estates, Powers and Trusts Law, and all other monies appropriated, credited or transferred from any other fund or source pursuant to law. Monies of this fund must be distributed to the child performer upon receipt of the child performer's trust fund. Within 30 days of receipt of the funds and the child performer's name and last known address, the comptroller must notify the commissioner of the Department of Labor. Also, within 30 days of receipt of the funds, the comptroller must give notice to the parent or guardian about funds and the procedures to transfer funds from the comptroller to the child performer trust fund account. Monies not claimed must be used solely to fund programs for the health, education and welfare of child performers.

Like California's Coogan's Trust, the CPTA treats employers hiring loan-outs as the employer of the minor. The CPTA has the same definition

of gross earnings as California, including the provisions affecting minors involved in the music industry.

Questions about certain aspects of the application of the law have already arisen:

- Can a minor who has a blocked account set up in a California financial institution have 15 percent of her New York earnings deposited in that California account?
- What about the reverse, where there is an existing New York account and a new employment agreement in California?
- A minor begins employment on March 1, 2004, and is scheduled to continue employment past March 28, 2004, the effective date of the New York statute. Are her earnings subject to the New York statute?
- What if the "employer" is based in New York, the minor resides in Florida and recording services will be rendered in Tennessee, through a Nevada loan-out corporation? Does the law apply?

[8.14] D. Limited Guardian

In New York, a limited guardian must be appointed if no guardian of the minor's property has previously been appointed or qualified in the state.⁵¹ The petition for approval of the contract may nominate a guardian, setting forth the reasons for selecting the named party and disclosing any interest in the contract or its performance.⁵² A parent is not ineligible to be appointed as a limited guardian by reason of interest in part of the earnings under the contract or its performance, provided such interest is disclosed.⁵³ However, the New York court may appoint a special guardian solely to represent the interests of the infant, at any time after the petition is filed.⁵⁴

There is no requirement in California for the appointment of a limited guardian for the purposes of protecting the property of the infant under

⁵¹ Arts & Cult. Aff. Law § 35.03(5), (7).

⁵² Arts & Cult. Aff. Law § 35.03(5).

⁵³ Arts & Cult. Aff. Law § 35.03(7).

⁵⁴ Arts & Cult. Aff. Law § 35.03(6).

the contract or to protect the infant's interest in the course of approving the contract.⁵⁵

[8.15] E. Parental Liability

If the employment contract is approved in New York, and if the parent is a guarantor thereon, the parent of the infant may be liable on the contract, either as a party or as guarantor, but only (1) if the infant was a resident of the state at the time the contract was made, and liability is sought to be imposed on the guarantor because of the minor's disaffirmance, repudiation, breach, failure or refusal to perform; or (2) in any other case, if the infant failed or refused to perform as required or permitted by the contract, and such failure or refusal arises from the parent's refusal to cause the required services to be rendered or performed.⁵⁶

There is no express statutory provision addressing this issue in California. In one case, the parents' signature on the contract engaging a business manager to work for the parents' infant daughter was sufficient to impose parental liability, even in the face of written disaffirmance by the minor during minority.⁵⁷

[8.16] F. Revocation of Approval

In New York, court approval may be revoked if the court finds the well-being of the infant is or would be impaired by performance of the contract. Approval is deemed revoked by the court until a contract, which has been modified by the court, is agreed upon by the parties and is reapproved.⁵⁸

No similar statutory provisions exist in California, although courts there would seem to have such inherent jurisdiction.

⁵⁵ However, a guardian may be necessary if legal action is required to enforce the minor's rights. See Cal. Fam. Code § 6601 ("A minor may enforce the minor's rights by civil action or other legal proceedings in the same manner as an adult, except that a guardian must conduct the action or proceedings."). Attorneys should be aware that "[a] contract for attorney's fees for services in litigation, made by or on behalf of a minor, is void unless the contract is approved . . . by the court in which the litigation is pending or by the court having jurisdiction of the guardianship estate of the minor." Cal. Fam. Code § 6602.

⁵⁶ GOL § 3-107.

⁵⁷ *Raden v. Laurie (Piper Laurie)*, 120 Cal. App. 2d 778, 262 P.2d 61 (1953), cited in *Waisbren v. Peppercorn Prods., Inc.*, 41 Cal. App. 4th 246, 48 Cal. Rptr. 2d 437 (1996) (a license is required where a personal manager occasionally procures employment for an artist).

⁵⁸ Arts & Cult. Aff. Law § 35.03(2)(e).

[8.17] III. THE INFANT AS EMPLOYER

In both New York and California, the same statutory authorization, jurisdictional rules and procedures for court approval, in the case of contracts entered into by the infant entertainer for the infant's own employment, apply to contracts entered into by an infant in which another party will render services to or for the infant, in connection with the infant's entertainment activities.

Since the minor is acting as employer, not employee, a net savings account need not be established. However, a limited guardian must still be appointed in order to safeguard the interests of the minor in the contract, as the minor lacks legal capacity to bind himself or herself absolutely. The procedures for nominating and selecting the limited guardian are governed by the same statutory provisions that apply to contracts pursuant to which the minor is employed.

[8.18] IV. OTHER ISSUES

[8.19] A. Intellectual Property Rights

Entertainment contracts with minors often require the minor to transfer intellectual property rights. California's disaffirmance statute expressly applies to contracts for the transfer of such rights.⁵⁹ However, by its terms, New York's statute applies only to contracts for services, and is silent on the issue of intellectual property rights.⁶⁰ Although the minor's right to disaffirm under New York law expires at age 18,⁶¹ commentators have noted that "[t]he potential for market instability as a result of uncertainty over the ultimate ownership of intellectual property rights of minors under

⁵⁹ The statute applies to contracts

pursuant to which a minor agrees to 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.

Cal. Fam. Code § 6750(a)(2).

⁶⁰ Arts & Cult. Aff. Law § 35.03(1).

⁶¹ GOL § 3-101.

18 seems obvious.”⁶² Issues relating to the minor’s transfer of copyright may be avoided, in some instances, by retaining the minor’s services on a work-for-hire basis. At a minimum, practitioners should be aware of potential problems in this area.

[8.20] B. Labor Laws

All states have enacted labor laws governing the employment of minors. In some states, minor entertainers are partially or completely exempted from the applicable labor laws.⁶³ Practitioners should consult the labor laws of the states where the minor lives and where he or she will be employed to determine which state’s laws apply and what they require in terms of work permits, working conditions and so on.

Both New York and California have specific enactments that regulate minors’ employment in the entertainment industries; however, California’s regulation is generally more comprehensive. In New York, minor performers under the age of 16 may not be employed, unless the mayor or other chief executive officer of the town where the performance is to take place has issued a child-performer permit.⁶⁴ The permit may be revoked for good cause by the issuing authority.⁶⁵

In California, minors seeking employment in the entertainment industry must obtain an Entertainment Work Permit.⁶⁶ To secure such a permit, the minor, among other requirements, must obtain written verification from the appropriate school district that the minor has satisfied that district’s requirements “with respect to age, school record, attendance and health.”⁶⁷ The permit is not valid for more than six months, and application for renewal must be made in the same manner as for the original permit.⁶⁸

62 Melvin Simensky, *The Right of Minors to Disaffirm Entertainment Contracts*, N.Y.L.J., July 18, 1986, p. 5.

63 See Martis, *supra* note 4, nn.30–31.

64 Arts & Cult. Aff. Law § 35.01.

65 Arts & Cult. Aff. Law § 35.01(7).

66 Cal. Admin. Code tit. 8, § 11753(a).

67 *Id.*

68 Cal. Admin. Code tit. 8, § 11753(b).

New York and California diverge with respect to work hours and education of minors employed in the entertainment industry. New York exempts the entertainment industry from age and working-hour restrictions applicable to minors.⁶⁹ Additionally, the New York Arts and Cultural Affairs Law does not address education, other than prohibiting issuance of a work permit where the minor's performing would be harmful to the "proper education of such child."⁷⁰ However, the pending Child Performer Education and Trust Act of 2003 authorizes the New York State Department of Labor to enforce education requirements for child performers.⁷¹

California, on the other hand, provides comprehensive regulation of the work hours and education of minors in the entertainment industry.⁷² These regulations address, for example, a studio's responsibility to provide teachers and said teachers' duties,⁷³ the applicability of California's child labor laws to work done on location in other states,⁷⁴ the presence of parents or guardians on location,⁷⁵ whether travel time counts as work time,⁷⁶ working hours,⁷⁷ meal periods⁷⁸ and work time.⁷⁹ Finally, many unions, such as the Screen Actors Guild (SAG), American Federation of Television and Radio Artists (AFTRA) and Actors Equity Association (AEA) have adopted special work rules that may apply to minors in connection with their services in the industry.

[8.21] V. CONCLUSION

The law in this area is fairly stable, but its application and interpretation appear uneven. While studies have compared the various statutes, no formal analysis has been made of their efficacy, the scope of compliance

69 Lab. Law §§ 130, 131, 132, 142, 143.

70 Arts & Cult. Aff. Law § 35.01(7).

71 *Variety, Gotham Backs Law Aiding Child Actors*, June 22, 2003.

72 Cal. Admin. Code tit. 8, §§ 11750–11765.

73 Cal. Admin. Code tit. 8, §§ 11755, 11762.

74 Cal. Admin. Code tit. 8, § 11756.

75 Cal. Admin. Code tit. 8, § 11757.

76 Cal. Admin. Code tit. 8, § 11759.

77 Cal. Admin. Code tit. 8, § 11760.

78 Cal. Admin. Code tit. 8, § 11761.

79 Cal. Admin. Code tit. 8, §§ 11763, 11764.

or (when compliance is attempted) whether the procedures are properly followed. Uniformity is absent even, for example, among the counties comprising the New York City metropolitan area. While courts have noted that the statutes “encourage parties to enter into contracts beneficial to the infant which they would otherwise forgo because of the uncertainty of voidability,”⁸⁰ anecdotal evidence suggests that the statutes may, in some cases, have the opposite effect. For example, due to the vast discretion vested in New York courts, some producers and other prospective employers avoid contracting in New York and have their contracts approved in California, because of the greater certainty generally available.⁸¹

Given the growth in the use of minors in the entertainment industry, the law governing the employment of minors is significantly more important. Accordingly, attorneys in the entertainment field who represent minors or parties dealing with minors should thoroughly familiarize themselves with the applicable New York and California laws and regulations, as well as the laws of their own states regarding the employment of minors.

80 *In re Twentieth Century Fox Film Corp. (Culkin)*, 190 A.D.2d 483, 487, 601 N.Y.S.2d 267, 270 (1st Dep’t 1993), distinguished by *In re Will of Hofmann*, 284 A.D.2d 92, 727 N.Y.S.2d 84 (1st Dep’t 2001) (where the mere fact that embarrassing allegations may be made against the fiduciaries or their attorneys in opposition to their request for attorneys fees is not a sufficient basis for a sealing order). This proposition is contrary to that of *Twentieth Century Fox*, where dealing of documents was found to be appropriate since it supported the goal of encouraging parties to enter into contracts beneficial to the infant.

81 On the other hand, production companies employing child actors have been known to locate outside of California in order to avoid the cost of complying with California’s strict schooling requirements. See Martis, *supra* note 4, p. 37.

INDEX OF APPENDIXES

- Appendix A Stipulation Waiving Notice of Hearing of
Petition for Approval of Minor's Contract
(California)**
- Appendix B Petition for Order Approving Contract of Minor
(California)**
- Appendix C Order Approving Minor's Contract and
Establishing Savings Plan (California)**

APPENDIX A

**Stipulation Waiving Notice of Hearing of
Petition for Approval of Minor's Contract**

JOHN DOE

Attorney-at-Law

Movie Magnum Street

Los Angeles, California 91505

Telephone: (213) 555-5555

**IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY
OF LOS ANGELES**

In the Matter of the Contract

between

:

: No.

:

MOVIES FOR THE MASSES,

a Division of

MOVIE MAGNUM

ENTERPRISES, INC.,

a Corporation,

:

: **STIPULATION WAIVING**

: **NOTICE OF TIME,**

: **PLACE OF HEARING OF**

: **PETITION FOR**

: **APPROVAL OF**

: **MINOR'S CONTRACT**

Petitioner,

and

:

:

:

:

:

:

Minor.

IT IS HEREBY STIPULATED AND AGREED by and between MOVIES FOR THE MASSES, a Division of MOVIE MAGNUM ENTERPRISES, INC., the Minor above-named, and _____, the mother of said Minor, that the petition of MOVIE MAGNUM ENTERPRISES in the above-entitled matter for approval of certain contracts may be heard in Department "2" of the above-entitled Court on the ____ day of _____, 20____, at ____ a.m., or such other date and time to which the matter may from time to time be continued without any other or further notice, such notice being expressly waived.

DATED: _____

MOVIES FOR THE MASSES, a

Division of MOVIE MAGNUM

ENTERPRISES, INC. :

By: _____

Senior Vice President

JOHN DOE

Attorney for Petitioner

MINOR

PARENT

APPENDIX B

Petition for Order Approving Contract of Minor

JOHN DOE
Attorney-at-Law
Movie Magnum Street
Los Angeles, California 91505
Telephone: (213) 555-5555

**IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY
OF LOS ANGELES**

In the Matter of the Contract between : No.

MOVIES FOR THE MASSES, : PETITION FOR ORDER
a Division of MOVIE MAGNUM : APPROVING CONTRACT
ENTERPRISES, INC., : OF MINOR TO RENDER
a Corporation, : SERVICES AS AN
: ACTRESS

Petitioner,
and

Minor.

Petitioner alleges:

1. Petitioner is now, and at all times herein mentioned was, a corporation duly organized and existing under and by the virtue of the laws of the State of Delaware and authorized to do business and is engaging in the business of producing and distributing motion pictures in the County of Los Angeles, State of California.

2. Petitioner is informed and believes and therefore alleges that _____, hereinafter referred to as the Minor, was born _____ and is now of the approximate age of _____ years.
3. The services of the Minor are to be performed in the County of Los Angeles and the written employment agreement referred to in Paragraph 5 herein was entered into in the County of Los Angeles, State of California.
4. Petitioner is informed and believes and therefore alleges that _____, the mother of said Minor, is entitled to the full and complete custody, control and care of said Minor.
5. The Minor and Petitioner have executed a written employment agreement (the "Employment Agreement") dated as of _____, under the terms of which Petitioner employed the Minor to render her services in Los Angeles County, California, in connection with a screen test and, at Petitioner's option, as an actress in motion picture(s) which may, at Petitioner's option, include the motion picture presently entitled "LAW FOR THE MASSES" as therein provided. A copy of the Employment Agreement is attached hereto and marked Exhibit "A" and "A-1."
6. A production services company may produce the motion picture "LAW FOR THE MASSES" in which event, with respect to "LAW FOR THE MASSES," all or a portion of Petitioner's rights under the Employment Agreement may be assigned to such production services company. The nature of the services to be performed by the Minor shall not be affected and Petitioner shall guarantee all obligations to the Minor in connection with "LAW FOR THE MASSES" and shall also guarantee compliance by such production services company with all orders of the Court in connection therewith.
7. Petitioner, the Minor and the parent of said Minor have entered into an agreement (the "Parental Agreement") dated as of _____, which Parental Agreement substantially provides for the release and relinquishment to the Minor of salary and compensation payable to the Minor pursuant to the terms and provisions of the Employment Agreement. A copy of the Parental Agreement between Petitioner, the Minor and the parent of said Minor is attached hereto and marked as Exhibit "B."
8. Petitioner is informed and believes and therefore alleges that the Employment Agreement dated as of _____, is fair, just and equi-

table to both parties thereto and is voluntarily entered into by and between the parties thereto.

WHEREFORE, Petitioner prays:

1. That, upon the hearing of this Petition, said Employment Agreement dated as of _____, a copy of which is attached hereto as Exhibit "A" and "A-1," be approved and confirmed;

2. That, upon the hearing of this Petition, the Court gives its instructions as to the establishment and maintenance of a savings plan for the benefit of the Minor;

3. That, upon the hearing of this Petition, the Court approve the assignment of the Employment Agreement by Petitioner to a production services company, upon condition that the nature of the services to be performed by the Minor under said Employment Agreement not be affected and that Petitioner guarantee all obligations to the Minor under said Employment Agreement and compliance by the production services company with all orders of the Court;

4. For such other and further relief as the Court may deem just and proper.

DATED: _____

MOVIES FOR THE MASSES, a
Division of MOVIE MAGNUM
ENTERPRISES, INC. :

By: _____

Senior Vice President

JOHN DOE
Attorney for Petitioner

MINOR

PARENT

STATE OF CALIFORNIA)

) ss.:

COUNTY OF LOS ANGELES)

JANE DOE, being duly sworn, deposes and says:

That she is the Senior Vice President of MOVIES FOR THE MASSES, A Division of MOVIE MAGNUM ENTERPRISES, INC., a Delaware Corporation, the Petitioner herein; that she has read the foregoing Petition and knows the contents thereof and that the same is true of her own knowledge except as to the matters therein stated on information and belief, and as to those matters, she believes to be true.

JANE DOE

SUBSCRIBED and SWORN to before
me this day of _____, 20____.

Notary Public in and for Said
County and State

APPENDIX C

Order Approving Minor's Contract and
Establishing Savings Plan

JOHN DOE
Attorney-at-Law
Movie Magnum Street
Los Angeles, California 91505
Telephone: (213) 555-5555

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY
OF LOS ANGELES

_____	:	No.
	:	
MOVIES FOR THE MASSES,	:	ORDER APPROVING
a Division of MOVIE MAGNUM	:	MINOR'S CONTRACT
ENTERPRISES, INC.,	:	AND ESTABLISHING
a Corporation,	:	SAVINGS PLAN
	:	
Petitioner,	:	
and	:	
	:	
_____	:	
Minor.	:	

The petition, under Section 6751 of the California Family Code, of MOVIES FOR THE MASSES, a Division of MOVIE MAGNUM ENTERPRISES, INC., for an Order approving the Employment Contract (which is more fully described in the petition on file herein and is attached thereto as Exhibit "A" and "A-1") between Petitioner and Minor, came

regularly to be heard on the _____ day of _____, 20____ at _____ a.m., in Department "2" in the above-entitled Court, THE HONORABLE _____, Judge, presiding. The Petitioner appeared through its attorney, JOHN DOE, and the Minor, _____, together with her mother, _____, appeared in person, pursuant to a stipulation on file herein waiving notice of the time and place of hearing. The Court considered the petition on file herein, together with the exhibits thereto, including the agreement of consent and relinquishment by the mother and father of the Minor, attached to such petition as Exhibit "B." It appeared to the Court, after having considered both oral and documentary evidence submitted in this file, that all of the allegations in the petition on file herein are true and correct, and that the Employment Contract between Petitioner and such Minor, on file herein, is just, fair and equitable to such Minor, and was freely and voluntarily entered into by all Parties thereto and that fifteen percent (15%) of the gross earnings payable to such Minor under said Employment Contract is a reasonable amount to be set aside in a savings plan for such Minor, and the Court being fully advised in the premises and good cause appearing therefor,

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Employment Contract is hereby approved, confirmed and ratified in all of its terms as just, fair and equitable and not subject to disaffirmance by such Minor;
2. Any assignment of the Employment Contract shall be subject to prior approval by this Court; provided, however, that if Petitioner elects to utilize a production services company in connection with the motion picture "LAW FOR THE MASSES," this Court hereby approves, with respect to "LAW FOR THE MASSES," the assignment of the Employment Contract by Petitioner to such production services company upon condition that the nature of the services to be performed by the Minor shall not be affected and Petitioner shall guarantee all obligations to the Minor in connection with "LAW FOR THE MASSES" and shall also guarantee compliance by such production services company with all orders of this Court in connection therewith;
3. Any injunctive relief as provided in said Employment Contract shall be subject to the provisions of Section 526 of the California Code of Civil Procedure;

4. The minor shall not be required to appear in any commercials in which alcoholic beverages or tobacco products, or items of intimate personal hygiene, are advertised;

5. Until further order of this Court, Petitioner shall deduct from the gross compensation payable by it to said Minor under said Employment Contract an amount equal to fifteen percent (15%) of the gross compensation payable thereunder to such Minor. Petitioner shall cause all such deducted amounts to be deposited in a blocked savings account in a federally insured bank or savings and loan institution with such account in the name of said Minor and with _____, mother of said Minor, as trustee; and that such monies in said blocked savings account may not be removed without the approval of this Court.

DATED: _____

Judge of the Superior Court