

ABA FORUM ON THE ENTERTAINMENT & SPORTS INDUSTRIES

***CURRENT TRENDS IN 2015 ON CONSTITUTIONAL, INTELLECTUAL
PROPERTY AND COLLECTION AND USE OF DATA ISSUES IN
ENTERTAINMENT, AS WELL AS REALITY TELEVISION DEALS AND
LITIGATION OVER MINORS' RIGHTS TO DISAVOW CONTRACTS***

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2:00 pm – 3:00 pm

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LITIGATION OVER MINORS' RIGHTS TO DISAVOW CONTRACTS

Question Presented: (From the viewpoint of the company) When litigation is necessary, what is the benefit of having a contract with a minor that was approved by a court vs. not court approved?

When a contract has been approved by a court, a percentage of the minor's earnings are held in trust. Thus, it is possible that the plaintiff can attempt to access the minor's earnings preserved in trust in order satisfy a judgment for damages against the minor if the minor breaches the agreement.

Whereas, in the situation where a contract with a minor has not been court approved, a plaintiff may be able to recover against a minor's parents if they were signatories to the contract. However, keep in mind that the parents may not have any assets to recover from and the minor (and/or the minor's parents) may have already spent or otherwise disposed of the consideration received under the contract.

What about contracts that involve work for hire provisions or assignments of intellectual property created by a minor? There is no case law on point. Thus, it's important to recognize that one of the other major risks of not seeking court approval of a contract with a minor is the possibility that an intellectual property assignment might be deemed invalid by a court if the minor disaffirms the contract.

I. REMOVING MINOR'S ABILITY TO DISAFFIRM ENTERTAINMENT & PERSONAL SERVICE CONTRACTS:

a. STATUTES

i. FLORIDA

- **Fla. Stat. § 743.08**: Removal of disabilities of minors; artistic or creative services; professional sports contracts; *judicial approval*.
- **Fla. Stat. § 743.09**: Removal of disabilities of minors; artistic or creative services; professional sports contracts; *procedure for court approval; appointment of a guardian ad litem*.
- **Fla. Stat. Ann. § 743.095**: Removal of disabilities of minors; artistic or creative services; professional sports contracts; *guardianship of the property*.

ii. CALIFORNIA

- **Cal. Fam. Code § 6752 - 6753**:
- Requires the creation of a “Coogan Account”, which mandates that a portion of the earnings be set aside, minimum of 15% of gross earnings.
- Requires consent of court for withdrawals out of “Coogan Account”
- Creates a **fiduciary duty between trustees (typically the parents) and the minor** with the “obligation or duty to ensure that the funds remain in trust, in an account or other savings plan insured in accordance with this section...”

iii. NEW YORK

- **§ 35.03**: Judicial approval of certain contracts for services of infants; effect of approval; guardianship of savings.

II. DOCUMENTS FILED IN COURT (FLORIDA): Petition for Court Approval of Contract with Minor and Other Required Documents Regarding Guardianship Over Property of Minor:

- a. In addition to petitioning for the court approval of the contract with minor, several other documents must be filed.
 - i. Petition for Approval of Contract and Removal of Disability including information provided to the court regarding who the company is and what the company’s credentials include; the contract itself
 - ii. Birth Certificate of Minor
 - iii. Petition for Order Designating Depository for Assets
 - iv. Petition for Appointment of Guardians of Property of Minor
 - v. Application for Appointment as Guardians of Property of Minor

- vi. Petition for Appointment of Guardian Ad Litem (or one will be appointed by the Court)
- vii. Fingerprint Card of Guardians of Property
- viii. Order to Approve Minor's Contract
- ix. Order Designating Depository for Cash Assets – 69.031
- x. Order Appointing Guardians of the Property
- xi. Letters of Guardians of Property

b. The 2015 Florida Guardianship Forms can be found by going the Florida Lawyers Support Services, Inc.'s ("FLSSI") website www.flssi.org and clicking on "Guardianship Forms".

III. CASE LAW: MINORS CAN DISAFFIRM CONTRACTS NOT APPROVED BY A COURT; HOWEVER, PARENTS CANNOT ESCAPE LIABILITY UNDER PARENTAL GUARANTEES EVEN IF MINOR DISAFFIRMS.

a. **Putnal v. Walker, 61 Fla. 720, (1911)**

- i. Not a contract for personal services.
- ii. Court found that where a minor disaffirms a contract, the minor must return any consideration received, "but, where he has disposed of it during his infancy, his right to disaffirmance is not dependent on his making good to the other party what he received."

b. **Raden v. Laurie, 120 Cal. App. 2d (1953)**

- i. **In this case, no petition for court approval was filed;** therefore minor's disability was not removed.
- ii. Manager of minor (Piper Laurie) entered into a contract with minor's parent for the purpose of securing employment for the minor "in the motion picture, theatrical, radio, television, and allied fields.."
- iii. **Court found that minor's disaffirmance did not terminate the obligation of the minor's parent to compensate the manager.**

c. **Scott Eden Mgmt. v. Kavovit, 563 N.Y.S.2d 1001 (Sup. Ct. 1990)**

- i. **In this case, no petition for court approval was filed;** therefore minor's disability was not removed.
- ii. Despite sustaining a minor's "absolute right" to disaffirm a management contract, the Supreme Court of New York held that minor and his parents must continue to pay the agent all commissions to which the mgr. was entitled to under the contract as they become due.
- iii. "After disaffirmance, the infant is not entitled to be put in a position superior to such a one as he would have occupied if he had never entered

into his voidable agreement.” Here, the rationale is preventing unjust enrichment.

d. Adams v. Tabor-Smith, (Cal. Ct. App. Sept. 17, 2002) UNPUBLISHED CASE

- i. In this case, no petition for court approval was filed;** therefore minor’s disability was not removed.
- ii.** Minor disaffirmed model release between photographer and minor’s parent, in which photographer was granted the right to commercially exploit the minor’s publicity rights.
- iii.** Citing the public policy of California to enforce releases signed by parents on behalf of children, the court ruled in favor of defendant photographer in a suit where the plaintiff parents of a minor claimed the minor’s disaffirmance voided their express parental release in a modeling contract.
- iv. Minor does have absolute right to disaffirm the contract at any time, however, this does not void the parent’s release.**
- v. The Court found that, the release was a contract between photographer, on the one hand, and the parent (not the minor model), on the other hand.**
- vi.** “Although a minor may disaffirm his or her own contracts, a release of a minor’s rights, signed by a parent, is valid under California law. (62 Cal.2d at p. 609, 43 Cal.Rptr. 697, 401 P.2d 1 [former Civil Code section 355 “applies to contracts of minors and protects them from their own improvidence in assuming contractual obligations. It does not apply to contracts between adults and is therefore not controlling on the question of a parent’s power to bind his child ... by entering into a contract of which the child is a third party beneficiary”
- vii.** The court found parents liable for attorneys’ fees in favor of defendant photographer.

e. Berg v. Traylor, 148 Cal. App. 4th 809, (2007)

- i. In this case, no petition for court approval was filed;** therefore minor’s disability was not removed.
- ii.** California Court of Appeals, held that Craig Traylor (minor and principal in the agreement) had a *right to disaffirm* the original contract and arbitration award and did NOT have to pay commissions to his former personal manager.
- iii.** HOWEVER – mom also signed the contract and was forced to continue paying commissions due.
- iv.** ***Compare to Scott Eden Management case where the Court held that the minor had to continue paying commissions in order to prevent unjust enrichment.**

IV. WORK-FOR-HIRE, COPYRIGHT ASSIGNMENTS AND OTHER INTELLECTUAL PROPERTY ASSIGNMENTS:

- a. Although *Tabor* does not involve an assignment of intellectual property rights, the case establishes that a minor cannot disaffirm the assignment of publicity rights made by the parent on behalf of the minor. However, *Tabor* is an unpublished opinion. Additionally, no discussion was made by the court regarding whether or not this same outcome would result if an assignment of intellectual property rights was made.
- b. No case law found involving issue of whether or not an intellectual property assignment remains valid following disaffirmance of a contract by the minor.
- c. There is a risk that courts may invalidate IP assignments if a contract not previously approved by a court is disaffirmed by a minor.
- d. This should be a major concern for companies who decide to forgo seeking court approval of their contracts with minors.

V. ETHICS:

- a. **Herig v. Akerman, Senterfitt & Edison, P.A., 741 So. 2d 591 (Fla. Dist. Ct. App. 1999)**
 - i. Attorney prepared artist management agreement between client (manager) and minor but failed to advise client that minor should have guardian of minor's property appointed and that client should seek court approval of the contract.
 - ii. Following minor's disaffirmance of the contract, client brought a malpractice claim against law firm and attorney seeking damages.
 - iii. On appeal, the Court ruled in favor of the attorney because there was no child performer protection statute at the time the contract at issue was drafted. The Court found that the attorney exercised reasonable judgment on an "unsettled" area of law.
 - iv. ***The take away is that attorneys should advise clients who engage the personal services of a minor to seek court approval of the contract. Now that the laws are more settled, attorneys who fail to do so could open themselves up to legal malpractice claims.***