



# Texas Entertainment and Sports Law Journal

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State Bar of Texas  
Entertainment & Sports Law Section

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### Notes...

The statements and opinions in the Texas Entertainment and Sports Law Journal are those of the editors and contributors and not necessarily those of the State Bar of Texas or the Entertainment & Sports Law Section. This publication is intended to provide accurate and authoritative information with respect to the matters covered and is made available with the understanding that the publisher is not engaged in rendering legal or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.

### Join the Section

All members of the Entertainment & Sports Law Section are encouraged to make sure that their dues are paid. All dues payments are to be made directly to the Section's Treasurer. An application for joining the Section is provided in this publication.

### Invitation to Publish

Think you have the talent to write an article? This is your invitation to put that talent to use. The Entertainment and Sports Law Journal is soliciting articles to publish in upcoming issues. Article formats vary from long footnoted analyses to more informal discussions, and topics may span the spectrum of the sports and entertainment fields. Contact the editor and discuss the possibility of writing an article on a subject that interests you.

*Comments on the Journal and articles may be submitted to:*

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## Chairman's Report

The Entertainment and Sports Law Section publishes this Journal three (3) times a year in an effort to provide quality reading and discussion about current issues to Section members. We hope that you find it useful in your respective practices. Our membership now totals 522 members including lawyers, law students, paralegals, industry personnel and other interested persons. There is no State Bar organization in the country that I am aware of that has such a quality journal for sports and entertainment law. We should all extend our appreciation to the Editor, Sylvester Jaime, as well as to all of the people who develop and write the articles.

It's been a great year for Texas and sports. Dallas and San Antonio won championships, respectively, of the NHL and NBA. Our dearly departed Houston/Tennessee Oilers/Titans came within about a foot of an NFL Super Bowl title.

In the world of entertainment, the month of March is filled with activities. Your Chairman will be the luncheon/keynote speaker at the first annual SXSW New Media Venture Conference on March 10, 2000 here in Austin. On March 17 and 18, again here in Austin, your Section and UT Law School will once again sponsor the Entertainment Law Institute. This year's Institute is dedicated to the memory of the great Austin/San Antonio musician/writer/performer Doug Sahm. We will and do miss him. Of course our seminar coincides with the SXSW Music Festival, so it's quite a hectic week here in the Capitol City. For more information on the Institute, please call the UT Law School CLE Department at 512-475-6700.

During the Institute, our Section is having a meeting at 5:30 p.m. on Friday, March 17, 2000, at Jackson Walker LLP, 100 Congress Avenue, 11th Floor, in Austin. Please join us if you can.

Last but not least, there will be a Section annual meeting at the State Bar Annual Meeting this June in San Antonio. We are planning on having, as always, a mini-CLE program in conjunction with this meeting.

Thank you for your support of our Section and for your help in making it one of the most dynamic of its type in the country.

Lawrence A. Waks

## FOR THE LEGAL RECORD

Remember the Journal can be accessed online at [www.stcl.edu](http://www.stcl.edu).

The NFL votes Houston a franchise. The NFL's 32nd franchise is the Houston ????? Congratulations to Bob McNair and former Entertainment & Sports Law Section council member Steve Patterson on their success in bring the new team to Houston!

Looks like the rest of the world is catching onto some finer points of American sports:

**LABOR Pains ...** A new players' union in Korea drew the ire of the teams, which countered with a threat to declare the players free agents before the season starts. Do players need to be reminded that American umpires lost their attempt to draw more money from baseball owners? Korea Baseball Organization representative, Lee Sang-hyun blamed it on "... all teams are losing money..." Therefore, the players cannot afford to have a players' association. Although South Korea professional baseball began in 1952, the 75 players are forming the first professional baseball union in South Korea ...

**FINANCIAL Gains ....** Mike Tyson drew the raves of the fans, and despite the government's best efforts and over fans' protest, Iron Mike made the bell, \$11 million, and perhaps a new venue. Tyson had the fans yelling "Move to England!", and his management talking of taking the show on the road. After disposing of British heavyweight champion Julius Francis, Tyson may be a bigger attraction in England and Europe than in the USA. A sellout crowd of 21,000 cheered Tyson as he knocked out Francis at the 1:03 mark of the second round. His performance brought back talk of high dollar pay-per-view and fighting current heavyweight champion Lennox Lewis. With the fan support in London and the promoter's success with the local fighting commission, who had initially banned Tyson from Britain because of his 1992 rape conviction, the only thing that can keep Tyson off TV and from big paydays, may be himself? Case in point, Orlin Norris of Lubbock, Tyson's victim of a blow after the 1st round bell, has sued Tyson in Manhattan State Supreme Court, alleging that Tyson promised Norris would be Tyson's next opponent ...

**DRUG Busts ...** The Australian Sports Drug Agency wants stricter penalties for drug use. With Sydney hosting the 2000 Olympics, The Australian Olympic Committee is taking a hard stance on drugs. AOC's secretary general Craig McLatchey, warned that, "The general rule is that no athlete should be pleading "I didn't know!" The AOC revealed that 376 athletes had been caught using drugs in Australia in the past 10 years, with 111 involved in more than 30 Olympic sports. Australia is apparently providing its athletes an opportunity to clean up their act prior to the testing periods before the 2000 Olympics ..." To show they are serious, after learning that Warren Richards was one of the AOC's nominations approved to carry the Olympic torch, the AOC cancelled him when they found the former Australian judo champion in the Sydney Long Bay Jail, doing 12 years for conspiracy to import prohibited substances ...

*Continued from Page 3*

**DISCRIMINATION Persists ...** Proving that unity counts for something, the American team that won the 1999 Womens' World Cup received new 5 year contracts from the U. S. Soccer Federation. A one-month boycott proved successful when the players balked at the Federation's tabling of the old contract, which did not provide for any bonus money. The players wanted \$5,000 per month plus \$2,000 per game. Under the old contract the players received \$7,5000 after winning the World Cup. Team captain Carla Overbeck projected the dispute as, "We did the right thing for the future of the youth in this country." Overbeck credited the threat to join the World Cup team in their boycott by the younger players who won the Australia Cup as the turning point in the boycott. The Federation agreed to the players' terms on the eve of the season's first exhibition game against Norway, a game which they lost, as they did in the rematch, to start the exhibition effort 0-2 ...

**And WOMEN grow stronger ...** A New Orleans federal appeals court ruled that LSU intentionally violated federal law requiring equal opportunities for college athletes. The 5th U. S. Circuit Court of Appeals has permitted the five women plaintiffs to seek unlimited monetary damages from the school. The discrimination lawsuit by the plaintiffs was filed against the LSU athletic department ...

**And the NCAA more complex ...** The 3rd U. S. Circuit of Court of Appeals ruled that the NCAA did not have to conform with Title VII of the 1964 Civil Rights Act because it did not directly receive federal funding. Despite the 4 black athletes' claim that the use of the tests discriminated against them in determining freshman eligibility, and the lower court striking the eligibility requirement, as unfair to blacks, the Circuit Court was persuaded that athletes cannot bring a claim against the NCAA for violating federal discrimination laws because the NCAA does not receive any funding subject to the civil rights statutes. The black athletes claimed that they were not being allowed to play or denied scholarships because of their low test scores on the SAT, and the court's ruling allows the NCAA to continue to use the tests to determine eligibility to play collegiate sports ...

The NCAA will require NCAA basketball tournament referees to consent to random background checks before they are able to participate in the March championship tournaments. The move is aimed at safeguarding the games from gambling influences. The written consent which must be signed by the referees, will permit an independent security agent to ask officials questions regarding ownership in business, bankruptcy, lawsuits, liens, judgments, or collections actions in their background. Bill Saum, director of agent and gambling activities for the NCAA believes the move "... is to protect the integrity of the game." Saum acknowledged the NCAA has no evidence that any official has ever been involved in a betting scandal, however "[O]fficials are a segment of society just like our coaches and student-athletes and ourselves, and we're all at-risk. This just ensures that all involved ... have great integrity." ...

After viewing a videotape showing International Boxing Federation officials taking bribes to manipulate the organization's ranking, U. S. District Judge John Bissell installed

a monitor for the IBF. The government sought a monitor after suing IBF founder Robert W. Lee Sr, and others, of taking bribes to determine fights and purses for boxers. The indictments included charges of failing to report the bribes as income on tax returns. The prosecutors claim to have audio and videotape evidence. The indictments included allegations that 7 promoters and managers were involved and 23 boxers were included. The IBF is the first sports group to receive court control under the Racketeer Influences and Corrupt Organization Act (RICO) ...

Less anyone forget the the potential for famous yet gracefully aged athletes, with John Elway, Wayne Gretsky, and Michael Jordan having their own website, George Foreman has agreed to the permanent use of his name. Salton Inc., maker of George Foreman grills, will pay Foreman \$113.8 million in cash and stock. According to company reports filed with the Securities and Exchange Commission, the deal used up all of Salton's cash reserve and a large portion of its line of credit. The deal will alleviate Salton's obligation to pay Foreman 60% of royalties on earnings from sales of the Foreman grills. Expect more products bearing Foreman's name for the outdoor season ...

Attorneys are considering appealing a federal judge's ruling requiring Bernie Gliberman to repay \$1 million plus interest to the city of Shreveport. The money was provided to Gliberman to support the Shreveport Canadian Football team which folded after receiving the money. The team folded in 1995 more than \$3 million in debt ...

Poaching penalties have increased while poaching in Texas is on the decrease. Under new statutes, first offense deer taking without landowner permission is now a state jail felony, penalty: 180 days to 2 years in jail and \$1,500-\$10,000 fine; a second conviction: a regular TPWD felony, penalties: 2-10 years in jail and \$2,000-\$10,000 fine. Taking wildlife other than deer and other "big game" without landowner permission: Class A misdemeanor, with 1 year in jail and \$500-\$4000 fine. The violator's hunting license is mandatorily revoked for at least 1 year. Jim Robertson, director of the Texas Parks and Wildlife Department's law enforcement division was quoted as saying "Almost all the district attorneys in the state have welcomed our cases with open arms ..."

And for all you over 40 rec athletes, this in from San Antonio, Tony Limon, 19, was sentenced to 5 years in prison for aggravated assault. Limon caused serious bodily injury to another player during a basketball game. The player was taken to a hospital and treated for nose and mouth injuries, Limon was suspended for the rest of the South San Antonio High School season. Although, James Rodriguez, Limon's attorney applied for probation, the fact that Limon was already on 4 years probation for a burglary caused Judge Mark Luitjen to impose the prison sentence. Moral, no longer is the heat of competition an absolute defense ...

Sylvester R. Jaime, Editor

## **RECENT CASES OF INTEREST**

Prepared by the South Texas College of Law  
Sports and Entertainment Law Society  
Tamer Morsi, Student Casenote Editor

### **Keeping The Media Out Of Our Homes**

Reaffirming that a person's home is his castle, a unanimous United States Supreme Court recently held that it was a violation of the Fourth Amendment for members of the media to accompany police officers during the execution of an arrest warrant in a private home. Wilson v. Layne, 526 U.S. 603 (1999). The case arose after a reporter and a photographer from the Washington Post accompanied federal marshals and state police officers into the home of the subject of an arrest warrant. The reporter and photographer observed and took pictures of the officers subduing the father of the suspect. The officers mistakenly believed the suspect's father was the suspect. The officers left after learning that the suspect was not at home. The residents then brought suit against officers seeking money damages, claiming that their Fourth Amendment rights were violated because the officers had allowed the reporter and photographer to accompany them into a private home as part of the officer's "ride along" plan.

In evaluating the Fourth Amendment claim, the Supreme Court first recognized that the presence of a third party is allowed when it aids in the execution of a warrant. For instance, the police can bring a third party into a person's home during a search for stolen property when the third party can identify the stolen property. In essence, the third party must serve some purpose material to the police's business. In the current case, the officers argued that the reporters' presence served two material purposes: (1) the reporters helped to inform the general public about the administration of criminal justice, and (2) the reporters helped to ensure the police's fair treatment of suspects. The Court rejected both reasons. The Court first found that the Fourth Amendment right to be free from unreasonable searches and seizures outweighed the general public's First Amendment right to be informed about the administration of criminal justice. Furthermore, although the Court found that it might be reasonable for police officers to videotape home entries in an effort to preserve the rights of the homeowner, the Court held that the media "ride along" was not designed to help the police preserve these rights. The Court reasoned that the reporters were working on a story for their own private purposes, not for the benefit of the police. This was evidenced in large measure by the fact that the reporters, rather than the police, retained possession of the photographs taken during the incident.

Although the Court found that the media "ride along" was unconstitutional under the Fourth Amendment, it did not impose liability on the officers. Instead, the police officers were granted qualified immunity because their conduct did not violate clearly established constitutional rights. Qualified immunity was appropriate because the status of the law was "undeveloped" at the time of the media "ride along." As a result, the officers could not have reasonably known whether such a "ride along" was unconstitutional and the officers could not have been "expected to predict the future course of constitutional law." Although the Court granted these officers qualified immunity, it will no longer exist for officers who allow media "ride alongs" into a person's home. According to Arthur B. Spitzer, Legal Director of the American Civil Liberties Union of the National Capital Area, "law enforcement officials can no longer have any doubt that their conduct must be guided by the Bill of Rights and not by the demands of infotainment."

by: Cindy Smith

### **Athletic Trainers Are Professionals Under The Fair Standards Labor Act**

The Fifth Circuit recently found that athletic trainers for the San Antonio Independent School District were not entitled to overtime benefits pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. Owsley v. San Antonio Independent School District, 187 F.3d 521 (5th Cir. 1999). The athletic trainers in question worked with school coaches and athletes in an effort to prevent injuries and rehabilitate injured players. The trainers ordinarily worked approximately sixty hours per week. The trainers filed suit claiming that the Fair Labor Standards Act required their employer to pay overtime for hours worked in excess of forty hours in any given week. However, both sides agreed that the Act did not require employers to pay overtime to employees who worked in "bona fide professional capacities." Thus, the dispute was whether the trainers were considered "professionals" under the Act.

Since both parties stipulated that the trainers earned more than \$250 per week, the parties agreed that the correct test for determining whether the trainers qualified as professionals was the so-called "short test" found in 29 C.F.R. § 541.3. To qualify as a professional under this test, an employee's primary duties needed to meet two requirements: (1) the employee's work must have required advanced knowledge in the field of science, customarily acquired by a prolonged course of specialized instruction and study [the so-called "learned" prong], and (2) the employee's work must have required the consistent exercise of discretion and judgment [the so-called "discretion" prong]. In order to avoid paying overtime, the employer needed to prove that the employees satisfied both prongs and were therefore "professionals" exempt from receiving overtime under the Fair Labor Standards Act.

The Court first found that the trainers satisfied the "learned" prong of the test because the trainers were required to complete a specific course of study to become certified. This included: (1) earning a bachelor's degree in any field, (2) completing 1800 hours of apprenticeship work over a three-year period, (3) completing five three-credit-hour college courses in specific subjects related to athletic training, and (4) completing a C.P.R. test. The Court relied heavily on the requirement that the trainers complete five specific three-credit-hour courses. These five specialized courses showed that the trainers were required to complete specialized instruction in a field of science directly related to sports medicine and athletic training.

The Court then found that the trainers satisfied the "discretion" prong of the test because the trainers' job description and actual job required the consistent exercise of discretion. Even though the job description stated that the trainers were to work under the "direction and supervision" of a team physician, the job description also indicated that the trainers would exercise a substantial amount of independent discretion in the performance of their duties. These discretionary functions included: (1) establishing specific procedures for coaches and student trainers in the event of an emergency, (2) communicating with parents, physicians, and coaches concerning injured athletes, and (3) determining an athlete's status for a game or practice following an injury. In addition to the functions described in the job description, the trainers were routinely required to assess

*Continued from page 4*

the extent of an injury. This sometimes required a neurological evaluation of the injured athlete by assessing consciousness, intellectual performance, sensation, and movement. Most importantly, the Court noted that there was “no evidence” that the team physicians supervised the trainers’ activities at all times, or even most of the time. Thus, the trainers routinely made important, independent, and complex decisions regarding the athletes. By making these decisions, the trainers satisfied the “discretion” prong.

Since the Court found that the trainers satisfied both the “learned” and “discretion” prongs of the test, they were deemed professionals under the Fair Labor Standards Act. As a result, the school district did not have to pay them overtime.

by: Eric Singleton

## **The Famous Chicken Takes His Act to the Fifth Circuit**

After years of entertaining millions at sporting events, “The Famous Chicken” recently took his act to a more distinguished audience — The United States Court of Appeals for the Fifth Circuit. *Lyons Partnership v. Giannoulas*, 179 F.3d 384 (5<sup>th</sup> Cir. 1999). The case involved a dispute over The Chicken’s use of a “Barney” (The Big Purple Dinosaur) look-alike during recent performances at sporting events. During these performances, The Chicken would flip, slap, tackle, trample, and generally assault the Barney look-alike character. Although many in the audience were amused by the act, the creators of Barney were not amused. As a result, they filed suit alleging a violation of the Barney trademark.

In evaluating a trademark violation claim, the Fifth Circuit focuses on consumer confusion. More specifically, the Court examines a list of factors known as the digits of confusion. One of the digits of confusion is whether the trademark has been used in a parody. When this occurs, consumers should realize the satiric nature of the parody and this should alleviate consumer confusion. In “The Chicken” case, the creators of Barney contended that the use of Barney was

not intended as a parody. Furthermore, they argued that the district court placed too much emphasis on the parody analysis in evaluating the other digits of consumer confusion.

The Fifth Circuit first found that The Chicken’s act was a parody of Barney. The Chicken included the Barney look-alike in such a way that it clearly was an “artistic work that imitated the characteristic style of an author or a work for comic effect or ridicule.” The Court relied on the fact that The Chicken had used the minimum necessary to evoke the Barney character. While The Chicken used a character that dressed and danced like Barney, he did not make any other references to the mythical world of the loveable character. He did not impersonate Barney’s voice and he did not use any of Barney’s songs. In essence, Barney was referenced only to the extent necessary to conjure up the character’s image in the audience’s mind and it was clearly meant as a parody of the actual Barney character. Furthermore, although the creators of Barney claimed that young children would not have understood the parody, the Court found no credible evidence that a significant portion of the audience at evening sporting events were children.

After determining that The Chicken’s skit was a parody, the Fifth Circuit then held that the parody was relevant in evaluating the other digits of consumer confusion and should not be considered separately from the other digits of consumer confusion. The creators of Barney had argued that each digit of consumer confusion should be considered independently without any reference to whether a parody occurred. The Court disagreed and found that the other digits of consumer confusion could be examined in light of the finding that a parody occurred. Thus, although a parody is not an affirmative defense which bars a trademark violation claim, it may impact the other digits of confusion.

In conclusion, the Fifth Circuit found no trademark violation because there was no consumer confusion. Any likelihood of consumer confusion was diminished because The Chicken’s act clearly parodied Barney. Furthermore, the parody affected the other digits of confusion and led to a finding of no consumer confusion.

by: Joel Anderson

### **ENTERTAINMENT & SPORTS LAW SECTION of the STATE BAR of TEXAS MEMBERSHIP APPLICATION**

The Entertainment & Sports Law Section of the State Bar of Texas was formed in 1989 and currently has over 500 members. The Section is directed at lawyers who devote a portion of their practice to entertainment and/or sports law and seeks to educate its members on recent developments in entertainment and sports law. Membership in the Section is also available to non-lawyers who have an interest in entertainment and sports law.

The “Entertainment & Sports Law Journal”, published three times a year by the Section, contains articles and information of professional and academic interest relating to entertainment, sports, intellectual property, art and other related areas. The Section also conducts seminars of general interest to its members. Membership in the Section is from June 1 to May 31.

To join the Entertainment & Sports Law Section, complete the information below and forward it with a check in the amount of \$25.00 (made payable to ENTERTAINMENT & SPORTS LAW SECTION) to Susan Benton Bruning, Treasurer, 901 Main Street, Suite 4300, Dallas, Texas 75202

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## From the Editor

The Texas Entertainment and Sports Law Journal is published quarterly. If you are not on the mailing list and wish to be included, forward your name and address to the Section Treasurer along with a check for \$25 payable to the Entertainment and Sports Law Section and indicate that you wish to be included on our mailing list.

**We are now accepting advertisements in the Journal. Anyone wishing to advertise in the Journal, should contact the Editor for information on getting your ad in the Journal. Ad rates are: 1/8 page: \$50.00; 1/4 page: \$100.00; 1/2 page: \$150.00; 3/4 page: \$175.00 and full page: \$200.00.**

## Student Writing Contest

The editors of the TEXAS ENTERTAINMENT AND SPORTS LAW JOURNAL ("Journal") are soliciting articles for the fourth annual writing contest for students currently enrolled in Texas law schools for the best article on a sports or entertainment law topic.

The winning student's article will be published in the Journal. In addition, the student may attend either the annual Texas entertainment law or sports law seminar without paying the registration fee.

This contest is designed to stimulate student interest in the rapidly developing field of sports and entertainment law and to enable law students to contribute to the published legal literature in these areas. All student articles will be considered for publication in the Journal. Although only one student article will be selected as the contest winner, we may choose to publish more than one student article to fulfill our mission of providing current practical and scholarly literature to Texas lawyers practicing sports or entertainment law.

All student articles should be submitted to the editor and conform to the following general guidelines. Student articles submitted for the writing contest must be received no later than September 15, 2000.

**Length:** no more than twenty-five typewritten, double-spaced pages, including any endnotes. Space limitations usually prevent us from publishing articles longer in length.

**Endnotes:** must be concise, placed at the end of the article, and in Harvard "Blue Book" or Texas Law Review "Green Book" form.

**Form:** typewritten, double-spaced on 8½ x 11" paper and submitted in triplicate with a diskette indicating its format.

We look forward to receiving articles from students. If you have any questions concerning the contest or any other matter concerning the Journal, please call Andrew T. Solomon, Professor of Law and Articles Editor, Texas Entertainment & Sports Law Journal, at 713-646-2905.

**A COMPARATIVE STUDY OF TEXAS AND CALIFORNIA  
STATUTES, REGULATIONS,  
AND COLLECTIVE BARGAINING PROVISIONS REGARDING  
EMPLOYMENT OF MINORS IN THE ENTERTAINMENT  
INDUSTRY  
(REVISITED)**

by  
Ellen J. Jacobson \*

In the Fall of 1999, an Academy award-winning very well-known motion picture producer came to Texas to do principal photography on his current project.

The script called for the filming of a childbirth. During pre-production, the producer decided to “go for realism”, and to film an actual live birth – without the use of either a simulated newborn or an older “preemie” whose smaller size would allow it to double for a newborn infant.

The production manager had everything in place, or so he thought. Arrangements had been made to have an authentic delivery room. There were not one, but two, expectant mothers who had been hired by the production company who were willing to have their labor induced on cue in order to be in the film. An Ob-Gyn had been hired who also had his Screen Actors Guild card.

All seemed to be proceeding on schedule. Until the production counsel suits in New York mentioned one word. . . . .

**Liability.**

Needless to say, all the red flags went up around the production office. A major reason that this particular production company had come to Texas was because Texas has a reputation for being “film-friendly”. Texas film commissions and other state boards have for years adopted a cooperative attitude towards film producers by enacting statutory and regulatory provisions allowing for use of state highways, parks and historic buildings, and for exemptions from state sales and use taxes. Municipalities and communities welcome film production because the income generated through hotel occupancy taxes and the money spent by the production company during pre-production, actual filming, and post-production for construction and supplies, equipment and automobile rentals, local hires, food, hotels, license fees, etc. enhances economic development. Conversely, film producers are not encumbered by the various labor unions – particularly the Teamsters – that often restrict the logistics of production as occurs in other states.

Additionally, the filming of a live birth without the use of either a simulated child or a preemie could not have been done in California nor in Canada, where child labor laws, workforce commission regulations, and/or collective bargaining provisions prohibit the filming of a newborn under 15 days of age due to concerns about sterilization of the set, probability of staph and other infections, and candlelight intensity which could permanently damage the infant’s eyes.

As a consequence, this author’s office received a number of frantic calls from the film production office. First: “Was the Release drafted by New York counsel for signature by the expectant mothers sufficient to prevent the production company from incurring liability in Texas for any injuries sustained by either or both the mother and the newborn on the Texas film set?” . . . and . . .

Second: “What are the Texas laws and Workforce Commission Rules with which the film production company needs to comply?”

Answers: “No” to the first question, and “There are currently no Civil Statutes or Workforce Commission Rules on the books in Texas addressing the use of a live newborn infant on a film set” to the second question.

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When we first visited the subject of employment of minors in the entertainment industry in Texas in the Winter, 1995 issue of this Journal, Texas had reached a high water mark in generating film and television business

– both incoming and indigenous. Gross budgets for film and television projects shot in Texas was pushing \$200-million annually, and Texas had positioned itself as a major player as a “location state” which could support several film productions concurrently and provide industry-competitive local crew, production facilities, and performing talent.

Over the past several years, notwithstanding the decrease nationally in the number of film and television projects being filmed within the contiguous United States and the concurrent increased production in Canada due to more favourable permit and tax implications, the development and growth of Texas-based productions, particularly in the areas of music, music videos, locally-based television programming production, print and electronic media commercials and industrial films have provided opportunities for Texas talent to enter into, and to work professionally in, the entertainment industry – including the ever-increasing use of child performers, i.e., “minors”.

With ever-increasing numbers, Texas child performers are not only entering into the business, but are also “making it” – big time. One only has to look at major studio-backed feature films (particularly summer releases), network and cable television programming (most notably on the WB and FOX networks), daytime soap operas, regionally produced and other independent feature films, in music videos, television specials and industry awards shows, and in national commercials, to see current and former Texas child performers such as Jennifer Love Hewitt, Nick Stahl, Lukas Haas, Cameron Finley, LeAnn Rimes, and even current Texas resident Olympic gold medalist Tara Lipinski.

A matter of top priority among the various Texas state commissions is the balancing of the respective interests involved so that any additions, revisions, changes, or implementations in the legislative and regulatory schemes will concurrently serve 1) to continue to encourage and enhance children’s employment in the entertainment industry; 2) to continue to attract production companies to film in Texas, hire local talent and local crews, to make filming in Texas easy logistically regarding location shoots and permits, and to infuse substantial production dollars into the Texas economy while at the same time 3) ensuring the child performer’s wellbeing, safety, and dignity, the providing for his/her education, rest periods and meal breaks while the child performer is “on the set”, and the protection of his/her earnings from misuse or misappropriation.

While the Texas legislature since the 1995 Legislative Session has addressed some issues related to Texas children, such as recognition of home schooling, most of the issues raised in the original article published by this Journal in the Winter, 1995 issue, have remained unaddressed. However, the ongoing hiring of child performers for films, television, videos, musical performances, commercials and industrials, continues to focus attention upon the special problems and concerns related to their use within the only legitimate business in which children are employed in an otherwise adult working environment.

Because California paved the way for filmmaking in this country, it has long been at the forefront in enacting legislative and regulatory provisions regarding the employment of children in the entertainment industry. Commencing in 1927, and continuing up to the present date, most recently with a major revision of its “Coogan Law” which became effective January 1, 2000, California remains the leading state in addressing the special issues related to child performers. For this reason, the California statutory and regulatory schemes are included herein as a “guide” to aid Texas in Texas’ seeking how best to balance the respective priorities and concurrent interests set forth herein.

For the purpose of illustration and guidance, the following outline compares the statutory and regulatory schemes currently in place in Texas and in California in the areas related solely to the use and employment of minors in the entertainment industry.

However, because the talent unions, i.e., the Screen Actors Guild (“SAG”) and the American Federation of Television and Radio Artists (“AFTRA”) have national contracts which also specifically address the use and employment of child performers in various areas of film, television,

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video, interactive media, commercial and industrial productions and also often are applicable when minors work in these areas of the entertainment business in Texas, the relevant and applicable union contract provisions are referred to herein as well. Most particularly, these collective bargaining provisions apply when a production company is a signatory to the union contract, making the production a “union production” and thus subject to the particular union’s jurisdiction, notwithstanding the fact that the project is being produced in a right-to-work state such as Texas.

Further, in the absence of existing legislation and/or regulations in Texas in any of the subject areas set forth herein, the relevant applicable union contract provisions control where the project is a “union production”.

**AUTHOR’S NOTE:** Relevant provisions from applicable talent union contracts are cited in this article. Because union contracts are renegotiated prior to their expiration dates, or may expire months before new union handbooks are printed, or have contract periods which are extended from time to time due to industry events or considerations, the union contracts and relevant provisions therefrom which are cited in this “Comparative Analysis” may be contained in union contracts which expired subsequent to the drafting and/or the publication of this article. It is therefore recommended by the author that, as with legislative and regulatory changes which also can occur periodically, the reader use the following analysis as a guide and an overview of the relevant laws, regulations and union provisions and research the existence of any revisions, modifications, additions, deletions, or changes which may have become applicable subsequent to the drafting and/or publication of this “Comparative Analysis”.

The **talent union contracts** which have provisions applicable to the employment of minors include the following, and are cited herein except where otherwise noted.

1. Screen Actors Guild Codified Basic Agreement for Independent Producers (herein referred to as the “**SAG Basic**”);
2. Screen Actors Guild Television Agreement for Independent Producers (“**SAG TV**”) – which because it duplicates and applies the general provisions of the SAG Basic relevant to employment of minors, is not separately cited herein;
3. Screen Actors Guild Commercials Contract (“**SAG Commercials**”). This Contract has separate “Schedules” for Principal Performers and for Extras which Schedules are substantively the same, except regarding “Education”. NOTE: To the extent that provisions of this Contract differ from provisions relating to minors contained in the SAG Basic, differing provisions are set forth, while similar provisions are cited only.);
4. Screen Actors Guild Amended SAG-Producer Interactive Media Agreement (“**SAG Interactive**”);
5. Screen Actors Guild Producers-SAG Codified Industrial and Educational Contract (“**SAG Industrial**”);
6. American Federation of Television and Radio Artists National Code of Fair Practice for Network Television Broadcasting (“**AFTRA Network TV**”);
7. American Federation of Television and Radio Artists Television Recorded Commercials Contract (“**AFTRA TV Commercials**”);
8. American Federation of Television and Radio Artists National Code of Fair Practice for Non-Broadcast/Industrial/Educational Recorded Material (“**AFTRA Industrial**”);
9. American Federation of Television and Radio Artists Radio Recorded Commercials Contract (“**AFTRA Radio Commercials**”).

The terms and conditions of the *American Federation of Television and Radio Artists-Screen Actors Guild Texas Regional Code* is also a factor in this region. The jurisdiction of this Code is Texas, Arkansas, Louisiana, Oklahoma and New Mexico. It does not contain separate provisions applicable only to minors, applies only to television and radio commercials, and binds all signatories thereto to the SAG and AFTRA Commercials

Contracts – the provisions of which two contracts that are relevant to child performers are included in this Analysis.

**NOTE:** The various referenced talent union contracts are consistent regarding Producer’s compliance with applicable child labor laws and regarding conflicting terms within the specific talent union contract. Producers agree to determine and comply with all applicable child labor laws governing employment of minors and if feasible, keep a summary of said laws posted in the production office. Also, where union provisions are inconsistent or less restrictive than any other child labor law in the applicable state or jurisdiction, the union provisions are “deemed modified” to comply therewith. Where internal inconsistent terms within specific talent union contracts between Sections governing minors and Sections governing adult performers exist, the Sections governing minors prevail and do so without rendering the remainder of that union contract invalid.

Generally, there are not separately applicable provisions for principal performers and for “extras”, making all provisions relevant to child performers applicable to all child performers, whether principals or extras.

Additionally, in the talent union contracts, the term “parent” is deemed to include “guardian”.

Also, there are often slight variations in the inclusiveness of provisions per union contract. Therefore, it is recommended that the individual talent union contract be consulted when a minor is engaged to perform in a specific subject area, i.e., a radio commercial, a feature film, a network television program, etc.

The **California Labor Standards Regulations** cited herein appear in **Title 8, Barclay’s California Code of Regulations, Chapter 6, “Division of Labor Standards Enforcement”**: *Subchapter 1: “Child Labor Orders – Prohibited Occupations”*, Article 1. Prohibited Occupations, Sections 11701 through 11707 and in *Subchapter 2: “Employment of Minors in the Entertainment Industry”*, Article 1. Motion Picture Industries, Sections 11750 through 11767. Applicable *California Labor Code* provisions are included within the references to the various California Labor Standards Regulations cited herein. NOTE: *Subchapter 2.5: “Child Labor Law Violations”*, Article 1. Regulations Regarding Citation and Penalty Procedure for Violation of Child Labor Provisions, Sections 11775 through 11784, being of general applicability to child labor rather than solely to the employment of minors in the entertainment industry, are not set forth in the within Analysis.

Also cited in the following “Comparative Analysis” are the relevant provisions of **Texas Labor Code, Subtitle B. Restrictions on Labor, Chapter 51. Employment of Children**: *Subchapter A. General Provisions*, Sections 51.001 through 51.003; *Subchapter B. Restrictions on Employment*, Sections 51.011 through 51.015; *Subchapter C. Administrative Provisions*, Sections 51.021 through 51.023; *Subchapter D. Penalty and Defense*, Sections 51.031 through 51.034; and *Subchapter E. Collection of Penalty*, Sections 51.041 through 51.046.

The above referenced *Texas Labor Code* provisions are the statutes upon which the Texas Workforce Commission (TWC), formerly called the Texas Employment Commission, rely in formulating TWC rules and regulations which implement and interpret the above-referenced provisions of the Texas Labor Code. **Texas Workforce Commission Rules** contained in **Chapter 817. Child Labor**: *Subchapter A. General Provisions*, Sections 817.1 through 817.5; *Subchapter B. Limitations on the Employment of Children*, Sections 817.21 through 817.24; and *Subchapter C. Employment of Child Actors*, Sections 817.31 through 817.33 are cited in this Article, in accordance with TWC recommendations, as the “Texas Child Labor Rules”.

Additionally, an overview summary of the Texas Child Labor Laws and the Texas Workforce Commission Child Labor Rules relevant specifically to child actors can be found in the Texas Film Commission’s **Texas Production Manual**. However, because the summary contained in the *Texas Production Manual* is intended by the Texas Film Commission to be an informal educational tool, is not a complete text of the Texas Child Labor Laws, nor

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is the summary written in the exact language of those laws, the *Texas Production Manual* is not cited in the within “Comparative Analysis”. It is only mentioned hereat as an additional informational resource.

It is the intent for this comparative analysis to provide Texas entertainment industry practitioners with a resource for determining which Texas laws, regulations, and/or talent union collective bargaining provisions might apply to their minor clients who are hired to work professionally in particular areas of entertainment, i.e., commercials, feature films, television, radio, industrials, etc., in Texas. In the absence of any applicable statutory or regulatory provisions in Texas, the relevant legislative and regulatory provisions of California cited herein addressing the particular subject area are offered to assist Texas entertainment attorneys with comparable jurisdictional and practical application guidance. In the interest of brevity, the full text of some of the more lengthy statutes, regulations, rules and/or talent union contract provisions are paraphrased and summarized herein rather than quoted in full. However, in all such instances, each such summary is followed by the applicable citation to which the reader is referred for the entire substantive language.

**AUTHOR’S NOTE:** Throughout the text of the following “Comparative Analysis” of California and Texas statutory and regulatory schemes, where there is no reference to Texas within an outline subject area, Texas has not yet addressed that subject area with either legislation or administrative rules. Additionally, talent union contract provisions address some outline subject areas not covered by either Texas Child Labor Laws or TWC Rules or by California Labor Codes or California Department of Labor Standards Enforcement (“DSLE”) Regulations. Where no reference is made within a particular outline subject area in this Comparative Analysis to California Labor Codes or Labor Regulations, California law has not addressed the area; however, practitioners may look to relevant union contract provisions, where the union contract(s) have jurisdiction over and have addressed the subject matter, for either guidance or practical application.

## COMPARATIVE ANALYSIS

### I. DEFINITIONS

#### A. CHILD/MINOR/CHILD ACTOR

##### Texas

“Child” - an individual under 18 years of age.  
Texas Labor Code Sec. 51.002(1);  
Texas Child Labor Rule 817.2

“Child Actor” – a child under 14 years of age who is to be employed as an actor or other performer.  
Texas Child Labor Rule 817.2

**NOTE:** Texas child labor laws apply to all children under the age of 18 years who are working in Texas, regardless of whether or not they reside in Texas. (Exception: California resident minors working in Texas for a California employer, i.e., a California based film producer). In Texas, specific laws apply to child actors under the age of 14 years, providing an Exception to Texas Labor Code Section 51.011 which prohibits the employment of children under the age of 14 years. However, actors who are from age 14 through age 17 are not considered “child actors” under Texas law but their employment is subject to the general Texas child labor statutes.

##### California

Uses the term “minor”, and defines such as any person under the age of eighteen (18) years who is required to attend school under Chapter 2 and Chapter 3 of the Education Code and any person under the age of six (6) years. A person under the age of eighteen (18) years who is not required to attend school under Chapter 2 and Chapter 3 of the Education Code solely because that person is a nonresident of California, is still considered to be a

“minor”.

California Labor Code Section 1286(c)

Labor Regulations incorporate same definition except includes minors under the age of six (6) years with respect to the number of hours a minor may be allowed to work.

California Labor Regulation Section  
11750. See also: California Labor  
Code Sections 55, 59, 1131, and 1391.2

#### Union Contract Provisions

“Minor” is any performer under age 18 years, except that does not include any such performer if the minor has satisfied the compulsory education laws of the state governing the minor’s employment; the performer is married; the performer is a member of the armed forces; or the performer is legally emancipated.

SAG Basic; SAG Interactive;  
SAG Industrial; AFTRA Industrial

Is defined under the employment laws of the state governing the employment, and also includes both principal performers and extra performers age 15 years or younger.

SAG Commercials; AFTRA TV Commercials;  
AFTRA Radio Commercials

“Children” are defined as persons sixteen (16) years of age or under. “Children’s program” has 75% of the performers being children under this definition.

AFTRA Network TV

### B. ENTERTAINMENT INDUSTRY

#### Texas

Texas has not addressed this subject.

**NOTE:** The only indication under the Texas Labor Code as to what “areas” within the entertainment industry might be covered is the “Performer Exemption” under which the Texas Workforce Commission (TWC) may authorize the employment of children under 14 years of age as performers in a motion picture or a theatrical, radio, or television production.

Texas Labor Code Section 51.012

#### California

“Entertainment Industry”, i.e., the “employer” is any organization or individual using the services of a minor in motion pictures of any type (film, videotape, etc.) using any format (theatrical film, commercials, documentaries, television, etc.), by any medium (theatre, television videocassette, etc.); photography recording; modeling; theatrical productions’ publicity; rodeos, circuses, musical performances; and any other performances where the minor performs to entertain the public.

California Labor Regulation Section 11751(a). See also:  
California Labor Code Sections 55, 59, 1396-1398

## II. ENTERTAINMENT WORK PERMIT AND PERMIT TO EMPLOY MINORS

### 1) MINOR’S ENTERTAINMENT WORK PERMIT

#### Texas

##### A. Certificate of Age (Applicable to all Child Actors)

Prior to employment, every child actor, except those working as “extras” must have an authorization for employment issued by the Texas Workforce Commission (TWC).

In order to obtain such authorization, the applicant (the child or the child’s parent, legal guardian, legal custodian, or prospective employer) must request a Certificate of Age. Obtained by submitting a completed application on a TWC form, a recent photograph to TWC specifications, and documentation evidencing proof of age (by birth certificate, baptismal certificate, life insurance policy, passport or the equivalent, or school record).

Certificates of age are effective from the date of issuance until applicant reaches age 18 years. No renewal necessary. Lost certificates may be

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reissued upon new application.

Texas Child Labor Rule 817.5; Texas Labor Code Sec. 51.022

**B. Child Actor Authorization (Applicable to Child Actors Under Age 14 Years)**

A child under 14 years of age may be employed in Texas as a child actor only by compliance with Subchapter C. of the Texas Child Labor Rules.

Every person applying for Child Actor Authorization must submit an application for authorization on the TWC's form, which form must be signed by the child's parent, guardian, or legal custodian. Proof of age and a photograph to TWC specifications must also be provided.

Authorization is effective when issued and expires when the child reaches age 14 years, unless the TWC establishes a shorter time period. Lost authorization certificates may be reissued upon new application.

Texas Child Labor Rule 817.31

**C. Application Exceptions (Applicable to Child Actors Under Age 14 Years if to be employed as "Extras")**

Child Actors to be employed as "Extras" may receive special authorization without filing an Application, if the employer or its agent communicates with the Texas Workforce Commission (TWC) prior to the actual work being performed 1) the identity of the employer, the project, approximate number of extras anticipated and anticipated dates of employment; 2) uses reasonable efforts to establish that each prospective child actor extra is under 14 years of age; 3) secures prior written consent to such employment from the parent, guardian or legal custodian of the child actor extra; 4) notifies all affected school principals, giving school authorities details concerning the nature and duration of the work to be performed on the project; and 5) submits a written post-production report to the TWC within ten (10) days following the last day of employment contained employment details and certification in compliance with Texas Child Labor Law and TWC Child Labor Rules.

Special authorizations for extras are effective upon employment and expire as soon as 1) child reaches age 14; 2) child receives a Child Actor Authorization; 3) the parent, guardian, or legal custodian revokes its consent in writing, or 4) the child's employment on that project that that employer ends.

Texas Child Labor Rule 817.32

**California**

Is required of all minors desiring to be employed in the entertainment industry. Applications are available through the DLSE's District Offices. All required information must be provided, including minor's personal vital statistics, and verification in writing from the appropriate school district of the minor's school record and attendance and health and confirmation that the school district's requirements in this regard have been met. Such verification by the school district must be filed concurrently with the minor's application for an entertainment work permit. The Division has jurisdiction to require a physical examination of the minor to ensure that the minor's physical condition permits the minor to perform the work or activity called for by both the employer's Permit to Employ Minor and the minor's Entertainment Work Permit.

California Labor Regulation Section 11753(a). See also: California Labor Code Sections 55, 59, 1308.5, 1311, 1396-1398

The minor's Entertainment Work Permit is for a period of six (6) months, subject to renewal in the same manner and under the same conditions as the original Permit. The minor may only work under the conditions prescribed by these Labor Regulations, and in conformity with all provisions of law governing working hours, health, safety, morals and other working conditions, etc.

California Labor Regulation Section 11753(b). See also: California Labor Code Sections 55, 59, 1308.5, 1311, 1396-1398

**Union Contract Provisions**

Minor's parent or guardian must provide Producer with certificate signed by a doctor licensed to practice medicine within the state where the minor resides or is employed, stating that the minor has been examined within six (6) months prior to working engagement and found to be physically fit.

SAG Basic

Parent shall obtain, complete and submit appropriate documents required by state and local laws governing employment of minor.

SAG Commercials; SAG Industrial

Children may be engaged on terms mutually satisfactory to Producer and the individuals concerned, subject to applicable law. Children on either children's programs or on adult programs receive minimum applicable fees for adults.

AFTRA Network TV

**2) PERMIT TO EMPLOY MINORS**

**Texas**

Texas has not addressed this subject.

**California**

An employer in the Entertainment Industry desiring to employ minors in any such work or activity which is not hazardous or detrimental to the health, safety, morals and education of such minors must apply to the Division of Labor Standards Enforcement (hereinafter referred to as "DLSE") for a Permit to Employ Minors. Sections 311 through 314 of the California Penal Code which define the acts which are hazardous or detrimental to the minor are used as guidelines.

California Labor Regulation Section 11751(b). See also: California Labor Code Sections 55, 59, 1396-1398

If the conditions of employment comply with Sections 11701 through 11707 which prohibit certain general occupations generally, particularly for children under the age of 16 years as to permissible work or activity, the Division of Labor Standards Enforcement ("DLSE") issues the Permit.

California Labor Regulation Section 11752. See also: California Labor Code Sections 55, 59, 1396-1398

Employer's Permit to Employ Minors may be denied, suspended or revoked if a misdemeanor violation of any Labor Code provision respecting child labor or any violation of these Labor Regulations occurs.

California Labor Regulation Section 11758. See also: California Labor Code Sections 55, 59, 1303, 1308, 1309, and 1311

Permit may also be denied issuance or renewal, or may be suspended or revoked if any permit holder, or authorized agent or representative of such permit holder, discharges or in any manner discriminates against a studio teacher who has either 1) made any oral or written complaint to the Division or to the permit holder, its agents, representatives or employees, that the conditions on the set or location were dangerous to the health, safety or morals of minors employed on the set or location, or taken any action to preclude, suspend or terminate the employment of minors on the set or location for such reasons.

California Labor Regulation Section 11758.1. See also: California Labor Code Sections 55, 59, 1308, 1311, and 1398

Permit applicant has appeal rights if Permit is denied issuance or renewal or is suspended or revoked by a duly authorized representative of the Labor Commissioners. Hearings are before the Labor Commissioner in accordance with Title 2 of the California Government Code.

California Labor Regulation Section 11758.2. See also: California Labor Code Sections 55, 59, 1311, 1398, and California Government Code Sections 11501, 11503, 11504

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**AUTHOR'S NOTE:** After two child actors and one adult actor were killed by a falling helicopter on the set of the John Landis film "Twilight Zone – The Movie", the Division of Labor Standards Enforcement ("DSLE") added Section 11707 in 1986. This Section highlighted as "further dangerous activities for minors under the age of 16" a prohibition against their working in close proximity to explosives or the functioning parts of unguarded and dangerous moving equipment, aircraft, or vessels, or of functioning blades or propellers.

#### **Union Contract Provisions**

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

If employment is in any areas outside of California, Producer shall so notify Union of such employment and where to occur.

SAG Basic; SAG Interactive

Producer shall advise parent (guardian) of the terms and conditions of minor's employment, estimated hours, hazardous work, special abilities required, as are known, at time of hiring.

If Station 12 (work in any area outside of California) is used, Producer must disclose to SAG the date and location of minors' employment.

SAG Commercials; SAG Industrial

At or before time employment contract or any minor is delivered to parent, Producer shall provide parent with copy of text of working conditions contained in SAG Commercials Contract unless minor has been previously employed under a SAG Contract.

SAG Commercials (NOTE: AFTRA TV Commercials and AFTRA

Radio Commercials Contracts have same provision except as employment occurs under an AFTRA Contract.)

Upon employment of minor, Producer shall notify minor's parent or guardian of the terms and conditions of the employment (studio, location, estimated hours, hazardous work, etc.), including Producer's name, place and duration of location work, if any, and special abilities required. Prior to first date of engagement, Parent shall provide Producer with the appropriate state and locally required documents related to the employment of the minor.

AFTRA TV Commercials; AFTRA Radio Commercials

Upon employment of minor, Producer shall notify minor's parent or guardian of the terms and conditions of the employment (studio, location, estimated hours, hazardous work, etc.), including Producer's name, place and duration of location work, if any, and special abilities required. Prior to first date of engagement, Parent shall provide Producer with the appropriate state and locally required documents related to the employment of the minor.

Upon employment in any areas outside of California, Producer shall notify AFTRA Local office by telephone where such employment will take place, at which time the AFTRA Local office is to acknowledge in writing its receipt of such information.

AFTRA Industrial

### **3) SPECIAL SITUATION: BLANKET PERMITS**

#### **Texas**

Texas has not addressed this subject.

#### **California**

May be secured by the employer under certain conditions and/or limitations: 1) May be granted to groups or organizations of minors; 2) Are only valid for the particular production and only for the time periods limited in the permit; 3) The Application therefor must be supported by satisfactory evidence that appropriate services of studio teachers will be provided – with special arrangements for a number of studio teachers required with groups of minors exceeding 100; 4) The Application therefore must

show proof that the minors are covered by workers' compensation insurance; and 5) there must be a parent or guardian for every 20 minors, or fraction thereof.

California Labor Regulation Section  
11754. See also: California Labor  
Code Sections 55, 59, 1308.5, 1311,  
1396-1398, 3600

### **III. EDUCATION OF THE CHILD ACTOR/SCHOOLING ON THE SET/HOME SCHOOLING**

#### **Texas**

No child actor under the age of 14 years may be employed in any manner that results in failure to receive class credits because of unexcused class absences, or which results in violation of the State Compulsory School Attendance Law contained in the Texas State Education Code, Sections 25.085 and 25.086, either as is presently worded, or may hereafter be amended to read, or of any rules promulgated thereunder.

Texas Child Labor Rule 817.33(1)

No child actor under the age of 14 years may be employed for more than two (2) consecutive school days during the school year in which the child is legally required to attend school without being furnished a tutor for the child's continuing education. The tutor shall be certified to teach in Texas by the Texas Education Agency or the State Board for Educator Certification, and shall make reasonable efforts to coordinate subjects and assignments with the child's classroom teachers.

Texas Child Labor Rule 817.33(9)

#### **California**

NOTE: This entire subject area of the California Labor Regulations was amended and supplemented in 1997 and 1998, therefore superceding the coverage of this subject in the Article which appeared in the Winter, 1995 issue of this Journal.

#### **A. STUDIO TEACHER; DEFINITION; CERTIFICATION**

"Studio teacher" – a certified teacher holding 1) one of the California teaching credentials known as a "Standard Credential" or as a "General Credential" issued under the provisions of the Teacher Credentialing Law of 1988 (the "Bergeson Act") or under the Teacher Preparation and Licensing Act of 1970 (the "Ryan Act") or under the provisions of the California Education Code in effect prior to the enactment of the Ryan Act, i.e., under the "Fisher Act", for multiple subject, elementary or early childhood education; **and** 2) one credential under the Bergeson, Ryan or Fisher Acts for single subject, secondary, or general secondary teaching or special secondary teaching in either English, Math, Social Science, Science or Foreign Language.

These credentials must be valid and current with certification by the Labor Commissioner. Certification by the Labor Commissioner is for a maximum of three (3) years, not to exceed the earliest expiration date of any one of the above qualifying teaching credentials.

The Labor Commissioner requires a written examination at the time of initial certification or renewal – which examination is 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.

Additionally, studio teacher applicants are required to successfully complete a 12-hour course of instruction designed by the Labor Commissioner to instruct the applicants in the duties and responsibilities of a studio teacher.

As a condition of renewal of certification by the Labor Commissioner, every studio teacher must complete three (3) 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 in the duties and responsibilities of the studio teacher.

California Labor Regulation Section

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11755 (a) through (d). See also:  
California Labor Code Sections 54, 55,  
59, 1308.5, 1308.6, 1396, 1398

A studio teacher who already possesses a certification by the Labor Commissioner and only one of the above-referenced credentials, may continue to be certified provided that sufficient evidence is provided to the Labor Commissioner that such studio teacher is in the process of obtaining a second credential to meet the within requirements **and** such second credential is obtained prior to 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 the type specified by with Labor Regulations in this Section.

California Labor Regulation Section  
11755 (e). See also: California Labor Code Sections 54, 55,  
59, 1308.5, 1308.6, 1396, 1398

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. However, studio teachers holding "special certificates" do not count toward satisfying the "studio teacher to minor ratios" specified in Section 11755.2.

California Labor Regulation Section  
11755 (f). See also: California Labor Code Sections 54, 55,  
59, 1308.5, 1308.6, 1396, 1398

NOTE: Section 11755.1 sets forth the time frame for the Labor Commissioner's processing of a studio teacher's application. Since such relates to Labor Commissioner's filing schedule for the administrative procedures regarding the studio teacher's application, rather than to the actual responsibilities of the studio teacher, the provisions of this Section are not included in this Article.

#### **B. USE OF STUDIO TEACHERS**

Shall be provided by employer on each call for minors from age 15-days to age 16 years. Must have one (1) studio teacher for every group of 20 minors or fraction thereof on Saturdays, Sundays, holidays, or during school vacation periods.

Shall be provided by employer on each call for minors from age 16 year to 18 years when required for the education of the minor. Must have one (1) studio teacher per 10 minors or fraction thereof.

California Labor Regulation Section  
11755.2. See also: California Labor  
Code Sections 55, 59, 1396, 1398

#### **C. AUTHORITY OF THE STUDIO TEACHER**

In addition to teaching, has responsibilities for caring and attending to the health, safety and morals of minors under age 16 years while such minors are engaged or employed in any activity pertaining to the entertainment industry and subject to these Labor Regulations.

In discharging these responsibilities, must be cognizant of 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.

Has the authority to refuse to allow the engagement of a minor on the 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 minor's health, safety and morals. The employer may appeal such action to the Labor Commissioner who may either affirm or countermand the studio teacher's actions in this regard.

California Labor Regulation Section  
11755.3. See also: California Labor  
Code Sections 55, 59, 1396, 1398

#### **Union Contract Provisions**

If minor is to be employed for three (3) or more consecutive days, Producer agrees to employ a teacher whenever the minor is engaged on any

day when the minor's primary or secondary school is regularly in session. Same applies when Producer plans scenes to be photographed with minor. Where original shooting schedule is only two (2) days but it is subsequently determined that additional calls will be necessary, Producer is only obligated to use best efforts to provide a teacher on the third consecutive day, or at the latest, on the fourth consecutive day of such employment and thereafter.

Minor still must be taught on any day that his or her regularly attended primary or secondary school is in session if the Producer has employed a teacher to instruct another child performer on the same production.

No teacher need be provided during post-production work if such work occurs after the minor's regular school has been dismissed for the day.

Producer is required to provide schooling during the Producer's production work week.

The teacher provided must have proper teaching credentials from Washington, D.C., or any U.S. state, but need not be credentialed by or a resident of the state wherein the minor is working unless otherwise required by law.

Teacher's remuneration is paid by Producer. Maximum minors per teacher is ten (10), except that twenty (20) minors may be taught per teacher if the minors are in not more than two (2) grade levels.

Teacher generally may not serve more than one production in any one day.

If minor's regular instruction is primarily in a language other than English, teaching in that language must be provided where feasible.

On any day when the minor is not required to report to the set, the minor may attend his/her regular school, but Producer may not count more than three (3) hours towards "school time" under this Agreement. If minor's parent or guardian does not choose to have the minor attend regular school on such day, Producer may elect to have the minor's schooling for the day either on the set or in the teacher's home – but only if there are no other minors present in the home who are not also being taught by that teacher.

Producers signatory to the Agreement must provide a school facility which closely approximately the basic requirements for a classroom, particularly re lighting, heating, desks and chairs. Stationery buses or cars are not adequate unless exclusively used therefor; however a moving vehicle shall never be used as a school facility nor are minors ever to be taught while being transported to/from local locations. No one except the teacher and the minors shall be allowed in the area being used as a school facility. Producer shall provide schooling equipment and supplies, unless the minors regular school allows the minor's parent or guardian to obtain the minor's school assignments and school books for use on the set.

Although the studio teacher can determine the required number of hours to be devoted to instruction during the day, the minor must be taught at least three (3) hours per day, no period of less than 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 given day are four (4) for kindergarten, five (5) for grades 1 through 6, and six (6) for grades 7 through 12.

Producer shall require teacher to prepare written reports re minor's attendance, grades, etc., for the minor's parents or guardian to deliver to the minor's regular school at the end of each assignment or at such intervals required by such school.

SAG Basic

When Producer employs school age minors for three (3) or more days when school is otherwise in session for the minor(s), Producer shall provide three (3) hours of education on each such school day as part of the regular working day, and a teacher/tutor who has teaching credentials in the state of employment or the minor's home state who is qualified to teach the subjects which comprise the minor's curriculum.

SAG Commercials; AFTRA TV  
Commercials

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#### **IV. WORKING CONDITIONS/DANGEROUS ACTIVITIES/HAZARDS ON THE SET**

##### **Texas**

NOTE: Under Sections 51.021 and 51.024 of the Texas Labor Code, the TWC is given broad powers to inspect a place of business, within the two year most recently past, where a child is or has been employed, to collection information concerning the employment of such child or children, and to take such action which the TWC considers necessary to implement Chapter 51 of the Texas Labor Code. The administrative procedures and the penalty provisions of Chapter 51 set forth at Sections 51.024 through 51.046 which were either amended or added by the 74<sup>th</sup> Legislature in 1995 are not set forth herein because such Sections are of general application to working children in Texas and not solely to child actors working in Texas. Reference therefore is made to these provisions as the informational resource on the scope of the jurisdictional and remedial powers of the TWC.

##### **A. HAZARDOUS CONDITIONS**

No child actor under the age of 14 years may be employed in a position declared hazardous by the TWC. (NOTE: The TWC may declare an occupation to be hazardous according to the guidelines set forth in Texas Child Labor Code Section 51.014.)

Texas Child Labor Rule 817.33(2)

Although the TWC may by Rule restrict the employment of children 14 years of age or older in hazardous occupations, children of 14 and 15 years of age are prohibited from operating motor vehicles. However, if the child is age 16 or 17 years of age and has a valid drivers license under Chapter 521 of the Texas Transportation Code and is under the direct supervision of the child's parent, legal guardian, or custodian, the operation of certain motor vehicles under certain circumstances is not considered "hazardous" by definition, i.e., dangerous to the child's safety, health or well-being.

Texas Labor Code Sections 51.014; 51.015

NOTE: The TWC defines as "hazardous" to 14 and 15 year old children, occupations which the Secretary of Labor, pursuant to Section (3)(1) of the FLSA and Reorganization Plan No. 2 (issued pursuant to the Reorganization Act of 1945), has found and declared to be hazardous for the employment of children 16 to 18 years of age, or which are detrimental to their health and well-being. The TWC has adopted by Rule these federal regulations. A 1995 amendment to the Texas Labor Code eased the restriction on the hazardous occupation of driving, so that under Texas state law, but not under federal law, a person may employ a child to operate a motor vehicle for commercial purposes. There are also several "general exemptions" where the child is engaged in nonhazardous casual employment that will not endanger its safety, health, or well-being and to which the parent or adult having custody of the child has consented, or where the work is that of an "apprentice" where a written agreement about work standards may be applicable; however, if both federal and state law apply, the more restrictive provision controls – notwithstanding traditional preemption rules.

In adopting Child Labor Rules 817.21 (limitations re 14 and 15 year olds) and 817.23 (Limitations re 16 and 17 year olds), the TWC intends the federal child labor laws to control unless a provision of Texas Labor Code, Chapter 51 clearly indicates otherwise – so intending only to the extent that the federal laws are consistent with Texas Labor Code, Chapter 51.

Texas Child Labor Rule 817.4

##### **B. GENERAL WORKING CONDITIONS ON THE "SET"**

No child actor may be employed where that child is required to use a dressing room simultaneously occupied by an adult or by a child of the opposite sex or where the child is not provided a suitable place to rest or to play.

Texas Child Labor Rule 817.33 (4) and (5)

##### **California**

NOTE: Dangerous activities and occupations generally defined for minors under age sixteen (16) years of age under the California Labor

Regulations Section 11706 enacted in 1986 do not encompass activities or occupations within the entertainment industry. Subsequent to the decapitation deaths of two child actors and adult actor Vic Morrow by falling helicopter blades on the John Landis film "Twilight Zone –The Movie", which children were also working beyond the allowable daily end time for minor actors, the following Section was added to the California Labor Regulations:

Further dangerous activities for minors under the age of sixteen (16) years are determined to be working in close proximity to explosives or the functioning parts of unguarded and dangerous moving equipment, aircraft or vessels, or of functioning blades or propellers.

California Labor Regulation Section 11707.

See also: California Labor Code Sections 55, 59, 1293, 1296, and 1311.

##### **Union Contract Provisions**

Working environment where minor performs must be proper, with conditions not detrimental to health, morals and safety of minor. Also minor's education must not be neglected or hampered by the minor's participation in such performance.

SAG Basic

Performance environment must be proper for minor, not detrimental to minors health, safety, education or morals of minor as defined by Penal Code of state in which work is to be performed. Best interest of the minor is to be primary consideration of parent and adults in charge of production, with due regard to age of minor.

SAG Commercials; SAG Interactive;

AFTRA TV Commercials; AFTRA

Radio Commercials; AFTRA Industrial

#### **V. WORKING HOURS**

##### **Texas**

##### **A. LIMITATIONS ON EMPLOYMENT OF 14 AND 15 YEAR OLD CHILDREN**

A person commits an offense under this Section if he/she either permits to be employed or personally employs a child who is 14 or 15 years old and who is also enrolled in public or private school 1) to work more than eight (8) hours in a single day or 48 hours in a given week; and 2) between the hours of 10:00 p.m. and 5:00 a.m. on a day followed by a school day (or between midnight and 5:00 a.m. on a day not followed by a school day or if the child is not enrolled in summer school on any day during the term that school is in summer recess) unless the Commission has determined, upon application of a child, that a "hardship" exists making this Section inapplicable to that child.

Texas Labor Code Section 51.013

NOTE: The new TWC Rules adopted under Texas Labor Code, Title 2, provide the TWC with the authority to adopt, amend, or rescind such Rules as it deems necessary for the effective administration of the TWC and compliance with Texas Labor Code, Chapter 51, Employment of Children.

The TWC has adopted by reference Sections 570.31 through 570.34 and Sections 570.70 through 570.72 of Title 29 of the Code of Federal Regulations, to the extent that such Sections are consistent with the Fair Labor Standards Act (FLSA), 29 U.S.C. Section 201, et seq. Where federal regulations and the FLSA are inconsistent, the FLSA controls. The TWC has adopted these federal regulations as state rules governing the employment of 14 and 15 year old children in Texas – which rules will apply whether or not that employment is subject to the FLSA; however the application of Texas Child Labor Rule 817.21 is limited to the extent to which it is consistent with Texas Labor Code, Chapter 51.

Texas Child Labor Rule 817.21

An applicant applying for a "hardship waiver" from the limitation on hours worked for 14 and 15 year olds must obtain a Certificate of Age under the provisions of Rule 817.5 and also file a "hardship application" – both of which may be filed concurrently. The hardship application must contain 1)

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full details of the prospective employment including proposed hours to be worked, and 2) a written declaration stating the necessity for the child to work to support himself/herself or his/her immediate family (with supporting information), 3) a written statement from the principal of the school in which the child is enrolled as to the advisability of allowing the child to work the hours identified, 4) a written statement from the prospective employer regarding the fact and full details of the child's employment including pay rate, hours to be worked and expected duration. The hardship application may contain any other information supportive of the granting of the waiver. All waivers are valid for one year unless established for a shorter period or extended by the Executive Director of the TWC. NOTE: The TWC may require additional information and has its own internal procedures for processing hardship applications; however, once a final determination is made by the Executive Director, it may not be appealed nor are the proceedings leading up to the final determination considered to be a "contested case" under the Texas Government Code, Chapter 2001, Administrative Procedure Act.

Texas Child Labor Rule 817.22

#### **B. LIMITATIONS ON EMPLOYMENT OF 16 AND 17 YEAR OLD CHILDREN**

The TWC has adopted by reference Sections 570.50 through 570.68 of Title 29 of the Federal Regulations as being applicable to the employment of this age group just as Rule 817.21 applies to 14 and 15 year olds.

Texas Child Labor Rule 817.23

#### **C. LIMITATIONS ON EMPLOYMENT OF CHILD ACTORS IN GENERAL**

No child actor under 14 years of age may be employed during hours which would not be within the limits set by Texas Labor Code Section 51.013, except that the child actor is permitted, with parental consent, to work otherwise prohibited hours, so long as there is a 12-hour break after completing work and re-commencing work for the same employer and the child actor does not work over eight (8) hours in any single day nor more than 48 hours in any given week.

Texas Child Labor Rule 817.33(3)

#### **California**

NOTE: The amount of time minors are permitted at the place of employment within a 24-hour period is limited according to age.

##### **A. BABIES BETWEEN 15-DAYS AND 6 MONTHS OLD**

Maximum two (2) hours at place of employment. Day work not to exceed 20 minutes. No exposure to light greater than 100 foot candlelight intensity for more than 30-seconds at a single time.

A Nurse and a studio teacher must be provided for each three (3) or fewer babies age 15 days old to 6 weeks of age. For babies age 6 weeks to 6 months of age, one nurse and one studio teacher must be provided for each ten (10) or fewer infants.

California Labor Regulation Section  
11760(a). See also: California Labor  
Code Sections 55, 59, 1391, 1396, and 1398

##### **B. MINORS AGE 6 MONTHS TO TWO (2) YEARS OLD**

Maximum four (4) hours at place of employment, but no more than two (2) hours actually working; balance of the 4-hour period to be rest and recreation.

California Labor Regulation Section  
11760(b). See also: California Labor  
Code Sections 55, 59, 1391, 1396, and 1398

##### **C. MINORS AGE 2 YEARS TO SIX (6) YEARS OLD**

Maximum six (6) hours at place of employment, but no more than three (3) hours actually working; balance of the 6-hour period to be rest and recreation and/or education.

California Labor Regulation Section  
11760(c). See also: California Labor  
Code Sections 55, 59, 1391, 1396, and 1398

#### **D. MINORS AGE 6 YEARS TO NINE (9) YEARS OLD**

Maximum eight (8) hours at place of employment, but no more than four (4) hours actually working, and at least three (3) hours of schooling when the minor's school is in session. The studio teacher shall assure that the minor receives up to one (1) hour of rest and recreation. On days when school is not in session, working hours may be increased to six (6) hours, but one (1) hour must still be reserved for rest and recreation.

California Labor Regulation Section  
11760(d). See also: California Labor  
Code Sections 55, 59, 1391, 1396, and 1398

#### **E. MINORS AGE 9 YEARS TO AGE 16 YEARS OLD**

Maximum nine (9) hours at place of employment, but no more than five (5) hours actually working, and at least three (3) hours of schooling when the minor's school is in session. The studio teacher shall assure that the minor receives up to one (1) hour of rest and recreation. On days when school is not in session, working hours may be increased to seven (7) hours, but one (1) hour must still be reserved for rest and recreation.

California Labor Regulation Section  
11760(e). See also: California Labor  
Code Sections 55, 59, 1391, 1396, and 1398

#### **F. MINORS BETWEEN 16 AND 18 YEARS OF AGE**

Maximum ten (10) hours at place of employment, but no more than six (6) hours actually working, and at least three (3) hours of schooling when the minor's school is in session. The studio teacher shall assure that the minor receives up to one (1) hour of rest and recreation. On days when school is not in session, working hours may be increased to eight (8) hours, but one (1) hour must still be reserved for rest and recreation.

California Labor Regulation Section  
11760(f). See also: California Labor  
Code Sections 55, 59, 1391, 1396, and 1398

#### **G. EMERGENCY SITUATIONS**

Includes early morning or night exteriors shot as exteriors, live television or theatrical productions presented after the hours beyond which a minor may not work as prescribed by law. Employer may request permission from Labor Commissioner for minor to work such earlier or later than such hours. Each such request is considered individually by the Division and must be submitted at least 48 hours prior to the time the minor is needed.

California Labor Regulation Section  
11760(g). See also: California Labor  
Code Sections 55, 59, 1391, 1396, and 1398

#### **H. MINORS AGE 14 TO 18 YEARS WORKING DURING SCHOOL HOURS**

When minors within this age group obtain permission from school authorities to work during school hours not to exceed two (2) consecutive days, the working hours for such minor(s) during either or both such days may be extended to, but shall not exceed, eight (8) hours within 24 hours.

California Labor Regulation Section  
11760(h). See also: California Labor  
Code Sections 55, 59, 1391, 1396, and 1398

#### **I. LAPSE TIME BETWEEN TIME OF DISMISSAL AND TIME OF CALL FOR WORK**

Twelve (12) hours must elapse between time of dismissal and time of call (to the set or location) on the following day. NOTE: If the minor's regular school starts less than 12 hours after the minor's dismissal time, that minor must be schooled the following day at the employer's place of employment, i.e., on the set/location).

California Labor Regulation Section  
11760(i). See also: California Labor  
Code Sections 55, 59, 1391, 1396, and 1398

#### **Union Contract Provisions**

Maximum number of hours minors are permitted to work depends

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upon age of minor. In computing work time, meal periods are excluded, but school time is included. If minor is less than age six (6) years, maximum of 6 hours permitted. For minors between ages six (6) and nine (9) years, 8 hours are permitted. For minors between nine (9) and sixteen (16) years, 9 hours permitted. For minors between sixteen (16) and eighteen (18) years, 10 hours are permitted.

On evenings preceding school days: Work day no earlier than 5:00 a.m. or later than 10:00 p.m. If precedes non-school day, work day may end no later than 12:30 a.m.

Minor not to work more than six (6) consecutive days; however a day of school only or travel only shall not be counted as one of the consecutive days.

Producer must allow minor to have a 12-hour rest period prior to and at the end of employment before minor is to begin the next work or school day.

#### SAG Basic

Work day shall not begin before 7:00 a.m. for studio productions (6:00 a.m. for location productions) and shall end no later than 7:00 p.m. for minors under age six (6) years of age, no later than 8:00 p.m. for minors age 6 and older on days preceding school days or 10:00 p.m. on days not preceding school days.

State law governs the maximum work time for a minor; however, in no event shall minors under six (6) years of age work more than 6-hour days, for minors age 6 years and older, no more than eight (8) hours a day.

#### SAG Commercials

Minors 0 to 5 years: Maximum 6 hours of work ending by 7:00 p.m.

Minors 6 to 11 years: Maximum 8 hours of work, ending by 8:00 p.m. school days, 10:00 p.m. non-school days.

Minors 12 to 17 years: Maximum 8 hours of work, ending 10:00 p.m. school days, 12:30 a.m. non-school days.

For all age minors, work day not to begin before 7:00 a.m. for studio productions, 6:00 a.m. for location productions.

Work time not to include meal time, but shall include mandatory five (5) minute break for each hour of work.

Producer shall make every effort to adjust a minor's call time so that minor need not spend unnecessary hours waiting on the set.

#### SAG Interactive

Same as SAG Interactive except maximum for minors ages 12 to 17 years is 9 hours of work, with same end times. If minor is at a location, minor must leave location as soon as reasonably possibly following end of minor's working day.

#### SAG Industrial

Work day shall not begin before 7:00 a.m. for studio productions (6:00 a.m. for location productions) and shall end no later than 7:00 p.m. for minors under age six (6) years of age, no later than 8:00 p.m. for minors age 6 and older on days preceding school days or 10:00 p.m. on days not preceding school days.

State law governs the maximum work time for a minor; however, in no event shall minors under six (6) years of age work more than 6-hour days, for minors age 6 years and older, no more than eight (8) hours a day.

Minor is to have fifteen (15)-minute rest break every two hour period of work day. Work time does not include meal time, but shall include mandatory 15-minute rest breaks.

Union will follow library policy re granting of waivers if parent has been fully informed of the circumstances and granted advance consent.

#### AFTRA TV Commercials, AFTRA Radio Commercials

Minors 0 to 5 years: Maximum 6 hours of work ending by 7:00 p.m.

Minors 6 to 11 years: Maximum 8 hours of work, ending by 8:00 p.m. school days, 10:00 p.m. non-school days.

Minors 12 to 17 years: Maximum 9 hours of work, ending 10:00 p.m. school days, 12:30 a.m. non-school days.

For all age minors, work day not to begin before 7:00 a.m. for studio productions, 6:00 a.m. for location productions.

Work time not to include meal time, but shall include mandatory five (5) minute break for each hour of work.

Producer shall make every effort to adjust a minor's call time so that minor need not spend unnecessary hours waiting on the set.

#### AFTRA Industrial

## VI. GENERAL SUPERVISION OF THE CHILD ACTOR

### Texas

No child actor under the age of 14 years may be employed where the child's parent, guardian, or person having custody thereof, is prevented from being present at the child's place of employment while the child is working, or where such person is prevented from being within sight and sound of the child at any time during the child's employment.

Texas Child Labor Rule 817.33(7) and (8)

No child actor under the age of 14 years may be employed where that child is sent to wardrobe, makeup or to hairdressing, unless the child's parent, guardian or person having custody thereof is physically present at the child's place of employment.

Texas Child Labor Rule 817.33(6)

### California

A parent or guardian of a minor under age 16 years must be present with, and accompany, the minor on the set or on location and must be within sight and sound of the minor at all times.

California Labor Regulation Section  
11757. See also: California Labor  
Code Sections 55, 59, 1396, 1398

If minors on the set/location are dismissed early and are not to be picked up for several hours, they must be under the supervision of a teacher-welfare worker until picked up or until such time as they may be placed under the care of some other responsible adult.

California Labor Regulation Section 11765

### "Special Conditions"

#### 1. **Wardrobe/Makeup/Hairdressing/Promotional**

Publicity/Personal Appearances/Audio Recording

No minor under the age of 16 years may be sent to wardrobe, makeup, hairdressing or employed in any manner unless under the general supervision of a studio teacher.

If any such minor is not called to the set but is called for a period up to one (1) hour into wardrobe, makeup, hairdressing, promotional publicity, personal appearances, or for audio recording when such minor's school is not in session, a studio teacher need not be present, but the minor must be accompanied by the minor's parent or guardian.

California Labor Regulation Section  
11762. See also: California Labor  
Code Sections 55, 59, 1311, 1396

All time spent in makeup or hairdressing in the homes of minors with the assistance of other persons employed in connection therewith, is counted as "work time".

Limitation: No makeup person or hairdresser shall be permitted to work on minors at home before 8:30 a.m.

In every case, 12 hours must elapse between minor's time of dismissal on one day and the time makeup or hairdressing begins on the following day.

California Labor Regulation Section 11763

#### 2. **Work Time for Infants; Medical Examination**

Infants under six (6) months of age shall not be given medical examinations except between 9:30 a.m. and 11:30 a.m. or between 2:30 p.m.

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and 4:30 p.m.

Work time is limited to one period of two (2) consecutive hours in any one day, which 2-hour period must be either between 9:30 a.m. and 11:30 a.m. or between 2:30 p.m. and 4:30 p.m.

California Labor Regulation Section 11764

### **Union Contract Provisions**

Producer must require studio teacher to report immediately upon arrival at minor's place of employment on days when minor's regular school is in session. Studio teacher has primary responsibility for minor's education and supervision.

Parent or guardian must be present at all times while minor is working. Has right to be within sight and sound of minor, except in area on set designated as "school facility". Guardian must be at least eighteen (18) years of age, have written permission of minor's parent(s) to act as minor's guardian, and show sufficient maturity to be approved by Producer and teacher.

No minor may be sent to wardrobe, makeup, hairdressing, or employed in any manner unless under the general supervision of a teacher, parent or guardian.

At least two (2) adults shall be present at all times during a wardrobe fitting. Interviews and fittings for children attending school are to be held outside of school hours, and not later than 9:00 p.m.

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

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

Parents and guardians may not bring other minors not engaged to work by Producer to the set without Producer's specific permission.

SAG Basic; SAG Industrial

Parent must be present at all times and have right to be within sight and sound of minor, but shall not interfere with the production nor bring other minors not engaged by Producer to set. (NOTE: Provisions mirror provisions of SAG Basic cited above.)

Also: Whenever Federal, State or Local laws require, a child care person or social worker qualified in first aid (i.e., LPN or RN) shall be present during minor's work day on set.

Any performer under the age of seventeen (17) years shall have right to be accompanied by parent or guardian at all times.

SAG Commercials; SAG Interactive; SAG Industrial (NOTE: SAG Interactive and SAG Industrial have same provisions except do not address under age 17-year-old performers)

Parent or guardian must be present at all times while minor is working. Has right to be within sight and sound of minor. Guardian must be at least eighteen (18) years of age, have written permission of minor's parent(s) to act as minor's guardian.

Also: Whenever Federal, State or Local laws require, a child care person or social worker qualified in first aid (i.e., LPN or RN) shall be present during minor's work day on set.

Any performer under the age of seventeen (17) years shall have right to be accompanied by parent or guardian at all times.

If Producer engages minor, Producer must designate one individual on each set to coordinate all matters relating to minor's welfare and must notify minor's parent, guardian or teacher of the name of such individual.

AFTRA TV Commercials; AFTRA  
Radio Commercials

Parent must be present at all times and have right to be within sight and sound of minor, but shall not interfere with the production nor bring other minors not engaged by Producer to set.

If Producer engages minor, Producer must designate one individual on each set to coordinate all matters relating to minor's welfare and must notify minor's parent, guardian or teacher of the name of such individual.

Guardian must be at least eighteen (18) years of age, have written permission of minor's parent(s) to act as minor's guardian

Any performer under the age of seventeen (17) years shall have right to be accompanied by parent or guardian at all times.

AFTRA Industrial

## **VII. LOCATION WORK/TRAVEL TIME**

### **Texas**

Texas has not addressed this subject.

### **California**

When minors of compulsory school age who are California residents are employed by an employer in the entertainment industry located in California, are taken from California to work on location in another state as part of, and pursuant to, contractual arrangements made in the state of California for their employment in the entertainment industry, the child labor laws of the state of California and these Labor Regulations apply – including, but not limited to, the requirement that a studio teacher must be provided for such minor(s).

California Labor Regulation Section  
11756. See also: California Labor  
Code Sections 55, 59, 1311, 1398

All time spent in traveling from a studio to a location or from a location to a studio is considered part of the minor's working day.

California Labor Regulation Section  
11759(a). See also: California Labor  
Code Sections 55, 59, 1396, 1398

When the "location" is sufficiently distant to require an overnight stay necessitating travel daily between living quarters and the set, the time spent by the minor in traveling is not counted as working time – provided that the production company does not spend more than 45 minutes traveling each way and furnishes the necessary transportation. NOTE: This is a general rule, subject to reasonable changes by the studio teacher, with consideration of working and transportation conditions and the age(s) of the minor(s).

California Labor Regulation Section  
11759(b). See also: California Labor  
Code Sections 55, 59, 1396, 1398

### **Union Contract Provisions**

Applicable California laws and regulations apply to minors employed in the state of California or taken from California pursuant to contractual arrangement made in California.

When minors are hired and employed within states other than California, Producer is required to determine and comply with the prevailing law governing and defining minors; however applicable Union Contract provisions are agreed to by Producer.

Minor must leave location as soon as is reasonably possible following the end of the minor's work day, and may not be held later for transportation.

When minor is employed on an "overnight location", Producer must negotiate in good faith regarding expenses incurred by parent or guardian for transportation, lodging and meals, and approve such in advance. Producer must try to provide parent or guardian the same class of transportation and lodging as minor actor. Recommendation is that minors under age 11 years share room with parent or guardian, and minors between age 11 and age 16 years share room with parent or guardian of same sex.

SAG Basic

Producer must provide return transportation for minor on location promptly following the end of minor's work day.

SAG Commercials; AFTRA  
TV Commercials

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When minor is required to travel to/from location, Producer shall provide minor's parent with same transportation, lodging, meals, mealtimes, and per diem allowance as provided to minor. Minor must leave location as soon as reasonably possible following end of work day.

SAG Interactive; SAG Industrial

When minor is required to travel to/from location, Producer shall provide minor's parent with same transportation, lodging, meals, mealtimes, and per diem allowance as provided to minor.

AFTRA Radio Commercials;  
AFTRA Industrial

If minor is at a location, minor must leave the location as soon as reasonably possible following the end of the minor's working day.

AFTRA Industrial

## **VIII. INTERVIEWS/AUDITIONS/SCREEN TESTS/WARDROBE FITTINGS**

### **Texas**

Texas has not addressed this subject.

### **California**

No minor under the age of sixteen (16) may be sent to wardrobe, makeup, hairdressing, or employed in any manner unless under the general supervision of a studio teacher. When a studio teacher need not be present because the minor's school is not in session, the minor must be accompanied by a parent or guardian.

California Labor Regulation Section 11762.  
See also: California Labor Code Sections  
55, 59, 1311, and 1396

### **Union Contract Provisions**

Calls for interviews and fittings for children of school age must be after school hours and completed prior to 8:00 p.m. Two adults must be present. Producer must conduct interviews in a manner which protects the health, well-being and dignity of minor.

SAG Commercials; AFTRA  
Radio Commercials

Calls for interviews, individual voice and photographic tests, fittings, wardrobe tests, makeup tests, production conference, publicity, etc., for children of school age must be after school hours and completed prior to 8:00 p.m. Two adults must be present. Producer must conduct interviews in a manner which protects the health, well-being and dignity of minor. Calls for actual production, however, are not so limited.

Parent to accompany minor to wardrobe, makeup, hairdressing and dressing room facilities. No dressing room to be occupied simultaneously by minor and adult performer or by minors of opposite sex.

AFTRA TV Commercials

Must be completed by 7:00 p.m. Not to take place at any time during which minor would otherwise be attending school. Two adults to be present at all times. Minor shall not be removed from proximity of parent. Casting directors/other representatives Producer shall make reasonable efforts to provide safeguards and shall not engage in any behaviour which will embarrass, discredit, disconcert or otherwise compromise the dignity and mental attitude of minor.

SAG Interactive; SAG Industrial

Any facility used for interviews, tests or fittings must comply with local fire and safety codes. Maximum legal capacity for each facility must be prominently posted. Parent to accompany minor to wardrobe, makeup, hairdressing and dressing room facilities. No dressing room to be occupied simultaneously by minor and adult performer or by minors of opposite sex.

SAG Industrial

Must be completed by 7:00 p.m. Not to take place at any time during which minor would otherwise be attending school. Two adults to be present at all times. Minor shall not be removed from proximity of parent. Casting directors/other representatives Producer shall make reasonable efforts to

provide safeguards and shall not engage in any behaviour which will embarrass, discredit, disconcert or otherwise compromise the dignity and mental attitude of minor.

Parent to accompany minor to wardrobe, makeup, hairdressing and dressing room facilities. No dressing room to be occupied simultaneously by minor and adult performer or by minors of opposite sex.

Any facility used for interviews, tests, or fittings must comply with local fire and safety codes. Maximum legal capacity for each facility must be prominently posted.

AFTRA Industrial

## **IX. MEAL PERIODS/REST BREAKS/PLAY AREA**

### **Texas**

Texas has not addressed this subject.

### **California**

NOTE: The subject of "rest breaks" has been covered herein above under V. Working Hours. California.

All hours for the minor at the place of employment are exclusive of the meal period. The working day may not be extended by a meal period longer than by one-half (1/2) hour.

California Labor Regulation Section  
11761. See also: California Labor  
Code Sections 55, 59, 1396, 1398

### **Union Contract Provisions**

Producer must provide safe and secure place for minors to rest and play.

SAG Basic; SAG Commercials;  
SAG Interactive; SAG Industrial  
AFTRA TV Commercials; AFTRA Industrial

Minors shall be given a 15-minute rest break in every two-hour period of work day. Work time does not include meal time, but includes mandatory 15-minute break. Minors shall receive 12-hour rest break at end of work day and prior to the commencement of next day of work for same employment.

Exceptions in Contract which apply to adult performers generally do not apply to minors except where advance consent of parent may be obtained.

Union has liberal policy re granting waivers if parent has been fully informed of circumstances and has consented in advance.

SAG Commercials

Whenever Producer supplies meals or other food/beverages to cast or crew, same shall be furnished to all minors. Tables and seats shall be made available. No meal time shall be deducted from work time. "Meals" mean adequate, well-balanced serving of variety of wholesome, nutritious food, not snacks. No such means shall be deducted from minor's wages, but may be deducted from the "per diem".

SAG Interactive; SAG Industrial;  
AFTRA Industrial

Minors shall be given a 15-minute rest break in every two-hour period of work day. Work time does not include meal time, but includes mandatory 15-minute break. Minors shall receive 12-hour rest break at end of work day and prior to the commencement of next day of work for same employment.

Union has liberal policy re granting waivers if parent has been fully informed of circumstances and has consented in advance.

AFTRA TV Commercials; AFTRA  
Radio Commercials

## **X. UNUSUAL/EXTRAORDINARY PHYSICAL, ATHLETIC OR ACROBATIC ACTIVITIES OR STUNTS**

### **Texas**

Texas has not addressed this subject.

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### **California**

NOTE: Dangerous activities and occupations generally defined for minors under age sixteen (16) years of age under the California Labor Regulations Section 11706 enacted in 1986 do not encompass activities or occupations within the entertainment industry. Subsequent to the decapitation deaths of two child actors and adult actor Vic Morrow by falling helicopter blades on the John Landis film "Twilight Zone –The Movie", which children were also working beyond the allowable daily end time for minor actors, the following Section was added to the California Labor Regulations:

Further dangerous activities for minors under the age of sixteen (16) years are determined to be working in close proximity to explosives or the functioning parts of unguarded and dangerous moving equipment, aircraft or vessels, or of functioning blades or propellers.

California Labor Regulation Section 11707.

See also: California Labor Code Sections

55, 59, 1293, 1296, and 1311.

### **Union Contract Provisions**

No minor shall be required to work in a situation which places the child in clear and present danger of life or limb. If minors believes he/she is in such danger, the parent or guardian may have the teacher and/or stunt coordinator discuss the situation with the minor. If the minor's belief persists, the minor shall not be required to perform in such situation.

When minor's is asked to perform unusual activity of extraordinary nature, minor's parent or guardian shall first be advised of the activity and shall represent that the minor is fully capable of performing such activity. Producer is to comply with reasonable requests for equipment that may be needed for safety reasons.

SAG Basic; SAG Commercials;

SAG Industrial

Minor may be asked to so perform, provided minor and parent represent that minor is fully capable of performing such activity and parent grants prior written consent. Person qualified by training and/or experience will be present at time of production. Producer to supply equipment needed/requested for safety reasons.

SAG Interactive

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

Minor may be asked to so perform, provided minor and parent represent that minor is fully capable of performing such activity and parent grants prior written consent. Person qualified by training and/or experience will be present at time of production. Producer to supply equipment needed/requested for safety reasons.

Producer shall obtain copies of all safety guidelines issued by the Industry-wide Labor/Management Safety Committee.

SAG Industrial; AFTRA Industrial

No minor shall be required to work in a situation which places the child in clear and present danger of life or limb. If minors believes he/she is in such danger, the parent or guardian may have the teacher and/or stunt coordinator discuss the situation with the minor. If the minor's belief persists, the minor shall not be required to perform in such situation.

AFTRA TV Commercials; AFTRA

Radio Commercials; AFTRA Industrial

Minor may be asked to so perform, provided minor and parent represent that minor is fully capable of performing such activity and parent grants prior written consent. Person qualified by training and/or experience will be present at time of production. Producer to supply equipment needed/requested for safety reasons.

AFTRA TV Commercials

## **XI. MEDICAL CARE AND SAFETY**

### **Texas**

Texas has not addressed this subject.

### **California**

Is encompassed within scope of studio teacher's authority.

California Labor Regulations Section 11755.3

See also: California Labor Code Sections

55, 59, 1396, and 1398

### **Union Contract Provisions**

Prior to minor's first call, Producer must obtain the written consent of minor's parent or legal guardian for medical care in case of an emergency. If such consent is refused for religious reasons, Producer must at least obtain written consent for external emergency aid, provided that the obtaining of such consent is not contrary to the religious convictions of the parent or guardian.

SAG Basic; SAG Interactive

## **XII. EARNINGS OF CHILD ACTORS: PROTECTION FROM MISAPPROPRIATION AND/OR MISUSE BY PARENTS OR LEGAL GUARDIANS**

### **Texas**

Texas has not addressed this subject.

### **California**

#### **Background:**

The issue of a child actor's services and concomitant earnings and to whom the earnings belong, absent a parent's relinquishment thereof before the child becomes legally emancipated, has long been a part of traditional common law. The basis for recognizing parental prerogative has generally been predicated upon a reciprocal parental obligation to support the child. Therefore, at common law, the child's parents had the sole right to enter into a contract for the child's services.

Practical dilemmas arose with such an approach in early 20<sup>th</sup> Century Hollywood, where child actors worked and earned significant sums of income side by side with, and as though they were, adult actors. Under common law, because the child was not a necessary party to the contract, other means were required to induce the child to comply with the contract's terms. Further problems arose because the contract could not be specifically enforced, it expired when the child reached the age of majority, and even where the minor had executed the contract, the contract was subject to usual disabilities applicable to any minor's contract.

Initially, in order to address these practical problems, California enacted in 1927 an amended Civil Code Section 36 which established a proceeding whereby the minor's contract could be made binding upon that child. Section 36 provided that an otherwise valid contract could not be disaffirmed by the child during his/her minority, or at any time thereafter on the grounds that the contract had been entered into during his/her minority.

Section 36 contracts included contracts for the rendering of artistic or creative services, and also provided for the court's approval of the contract upon petition by either party to the contract. However, what Section 36 did not do was abrogate the parents' rights to their child's earnings under that contract for the child's services. It was not until the well-publicized legal battle over the dissipation of the earnings of child star Jackie Coogan by his mother that the California legislature in 1938 amended Section 36 to add provisions giving the court the power to set aside up to fifty per cent (50%) of the child actor's earnings in a trust fund or other savings plan for the benefit of the child.

Over the years, this California law has come to be known as the "Coogan Law", restated without substantive change in the California Family Code Sections 6750 through 6753 in 1992.

Regrettably, also over the years, various "loopholes" have been created

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by parents and legal guardians of child stars, which loopholes, such as designating the parent or legal guardian as the child's "manager" or as a "paid employee" of the child's production company, have resulted in the dissipation of the earnings – some to the extent of leaving former child performers with no earned funds and literally penniless upon reaching majority. Most notable among such former child stars were Shirley Temple, Macaulay Culkin, and Gary Coleman.

Additionally, the cases applying the "Coogan Law" over the years provided far more protection to film makers than to the child stars – the Courts often reasoning that the studios needed protection from disaffirmance upon majority because they were contracting with persons of no tested ability and so that the studios could risk the costly sponsorship of such talent.

The often inequitable results were that adults well beyond the age of majority remained bound to agreements they entered into as children, often for up to seven years, and that the Courts ruled without consideration of the best interests of the child.

### **Changes in the Industry – Use of Child Performers for Commercials, Single Projects, in Independent and Regional Projects:**

The flaws in the 1938 "Coogan Law" in failing to protect the child actor's earnings became increasingly evident as the famous "studio system" ceased to exist in the early 1960's — the studio practice under which child actors had personal service performance contracts for seven years (generally for initial terms of one year with options for up to six consecutive one-year extensions).

In today's entertainment industry, many child performer's earnings are from short term contracts on single projects, like commercials, independent films, music videos, concert performances, theatrical stage productions, television guest appearances, etc. Since these types of performances are not under long term contracts for personal services, there is no necessity for court approval of these contracts nor is there any great risk of disaffirmance.

Ironically, the evolution of the entertainment industry itself rendered the 1938 "Coogan Law" virtually obsolete – leaving child performers again without protection of their earnings – particularly where the child actor's parent(s) control all of the child's earnings – thus effectively avoiding the requirement of court approval.

### **Revised California "Coogan Law" - Effective 1/1/2000**

In 1999 the California Legislature amended and repealed various Sections of the Family Code, most specifically Sections 6750 through 6753 to address the problems, flaws and "loopholes" herein described.

The changes include the following:

1) The earnings and accumulations of an unemancipated minor related to a contract for artistic or creative services or to use the minor's likeness, voice recording, performance or story of his/her life, *inter alia*, remain the sole legal property of the minor;

2) Such contracts cannot be disaffirmed either during the child's minority or thereafter if the contract has been approved by the appropriate jurisdictional court;

3) The court shall require that fifteen per cent (15%) of the minor's gross earnings be set aside by the minor's employer in trust or other savings plan – although more than fifteen per cent (15%) may be set aside upon request of the minor's parent, legal guardian, or the minor through his/her guardian ad litem;

4) The court shall have continuing jurisdiction over the trust;

5) At least one parent or legal guardian who is entitled to custody, care and control of the minor, shall be appointed as trustee, although the court may determine that a different individual or entity is required in the best interests of the minor;

6) The minor's employer has 15 days after receiving the trustee's statement to deposit the fifteen per cent (15%) into the trust;

7) The trustee(s) shall establish a trust at an appropriately designated registered depository;

8) No funds may be withdrawn from the trust prior to the minor/beneficiary attaining age of majority without written order of the court; and

9) All or part of the trust funds may be invested (with limitations thereon in terms of acceptable investment funds, i.e., broad-based index funds, government securities, etc.).

**AUTHOR'S NOTE:** The lack of court review and approval which, prior to California's revision of its "Coogan Law", left child performers once again vulnerable to exploitation of their earnings by persons handling their finances, most particularly by their parents, who often feel "entitled" to spend the child's earnings on houses, cars, boats, jewelry, and extravagant vacations, *inter alia*, for themselves — which expenditures do not further the child's professional career — merely because they are the parents of the working child. This remains an ongoing and increasing problem in states such as Texas, which have substantial production work involving minors, but which do not as yet have this protection in place in either its legislative nor its regulatory scheme.

### **XIII. CONCLUDING REMARKS**

Texas's legislative and regulatory "scheme" has in place the various different yet compatible entities similar to that of California, i.e., the Texas Workforce Commission and Texas Legislature, which have concurrent jurisdiction over issues relating to the employment of minors in the entertainment industry.

Although Texas Civil Statutes and Texas Workforce Commission Rules have addressed many areas regarding the employment of minors, it is clear from the foregoing legislative and regulatory comparison between Texas and California (including applicable talent union contract provisions) that certain areas and issues relevant solely to minors working in the entertainment industry, arising from the rapid growth of film, television, video, commercial and industrial production in Texas, are as yet either 1) not addressed, or 2) require substantial clarification, amplification, or amendment in order to eliminate ambiguities, inconsistent or conflicting provisions, and disparate application.

This Comparative Analysis, demonstrates a need for Texas to update its statutes and TWC Rules so that such laws and rules reflect and address the increased use and needs of Texas child actors, while at the same time, balancing and taking into consideration the importance of Texas's competitive status as a regional location which is "friendly" to filmmakers and the positive economic impact upon Texas and its infrastructure which is created thereby.

### **ABOUT THE AUTHOR**

*\*ELLEN J. JACOBSON, a graduate of U.C.L.A., has been an entertainment industry and labor attorney based in Los Angeles for the past 22 years. In 1993 she established Resource/ARTS in Dallas, Texas, an arts and entertainment consulting business and literary agency – the latter of which focuses on the children's book market. She has been production counsel for various film and television production companies, including the ABC Television Network, the Cannon Film Group, and Dick Clark Productions, and also outside litigation counsel for the Los Angeles offices of various entertainment unions, including the Screen Actors Guild, the Writers Guild-West, and I.A.T.S.E. A former Director on the Boards of the Beverly Hills and Los Angeles County Bar Associations, Ms. Jacobson is one of the founding members of the Sports & Entertainment Law Section of the Dallas Bar Association, and served as its Chair in 1999, for which she received the DBA's 1999 Outstanding Section Chair Award. She is the author/editor of numerous industry publications, most recently Representing Minors in the Entertainment Industry – Guiding the Career of the Child Performer.*

## Names and Faces in the News:

Tic Price admitted he had an affair with a university student, paid her \$17,000 after the affair ended, and resigned as Memphis basketball coach. It was not revealed whether the payment was made in exchange for not pursuing any future lawsuits ...

Ben Christiansen, former pitcher for Wichita State, “did not intend to injure Anthony Molina” an opposing player, when he hit Molina in the face with a pitch. Sedgwick County, Kansas prosecutor Nola Foulston indicated that Molina suffered fractures to 3 bones surrounding the left eye when struck by the pitch. Christiansen admitted he threw toward Molina to keep him from timing pitches. As a result of its findings the prosecuting attorney declined to seek criminal charges against the former Wichita State player ...

Charles Woodson faced misdemeanor charges after a snowball he allegedly hurled hit a female fan in the face after a game in which his Oakland Raiders lost to the Denver Broncos ...

Ryan Leaf did not play for the San Diego Chargers, but he did play quarterback for a flag football team. Team officials claimed the game, in which Leaf suffered a sprained ankle and had to be assisted from the field, may violate his contract. Leaf was already on suspension for cursing general manager Bobby Bethard and unable to play for the Chargers due to undergoing treatment for his right shoulder ...

John Cornyn, Texas Attorney General, offered former NBA player John Drew the option of taking child support from Drew’s \$400,000 lump sum disbursement from the NBA’s pension fund. The Texas AG’s office collected \$102,500 in delinquent payments from Drew, who owed payments of \$1,200 per month for his 6 year-old son. Drew ended his 11 year career in the NBA in 1985, but had not paid child support for his son in 6 years. The amount collected by the AG included the 12% interest mandated by law for late payments ...

Kentucky State players were accused of taking \$12,000 in merchandise from a sporting goods store. The 13 women players were suspended, with 9 of the players being accused of theft and the other suspected of receiving stolen items. Scott Myers, of Hibbett Sports, indicated that a store employee was involved ...

St. Mary’s basketball coach, Othell Wilson was arrested and charged with kidnapping and rape. The 37 year-old coach, was accused of kidnapping a 20 year-old college student, his ex-girlfriend, and holding her for 3 days in his apartment.

LSU assistant Mike Haywood was allegedly offered \$30,000 from an NFL agent’s representative to help sign Anthony McFarland, a former nose guard for LSU. McFarland was a No. 1 pick of the Tampa Bay Buccaneers. Randall Menard was accused of representing William “Tank” Black, a sports agent from Columbia, S.C., when he made the offer to Haywood. Menard is also accused of offering \$10,000 to an academic counselor to help sign an LSU defensive back. The charges against Menard included acting as an unlicensed agent and illegal contact with athletes who had college eligibility ...

Houston defensive tackle Mike DeRouselle has caused a stir regarding the handling of his third-degree felony. Arthur Smith, UH chancellor, deemed the charges against DeRouselle, accused of forging the signature of a department representative to obtain \$700 worth of books—for classes in which he was not enrolled, and selling the books, were to be kept in-house and reported only to the NCAA, with a recommendation that the football player be suspended for only 1 game. The athletic department recommended that the player’s football scholarship be taken away. After DeRouselle was suspended for the last game of 1998 and 3 games of 1999 for receiving special benefits, an NCAA violation, UH Chief Peace officer George Hess, a 22-year veteran of the university, decided to take the matter to the Harris County District Attorney’s Office. Hess was subsequently fired and then reinstated to his position with UH. Dennis Duffy, UH general counsel, denies that the administration intervened in the DeRouselle matter and that Hess had been fired. Hess’ attorney, Glenn Diddel is awaiting word from

the university about Hess’ status. Hess’ action was apparently based on his disagreement with UH’s policy about reporting suspected crimes and leaving the decision about what crimes to report to university senior administrators. Harris County District Attorney John B. Holmes, Jr., was quoted as saying “[Hess] is a peace officer and he has the right to exercise his discretion. [DeRouselle] has had his chance once before. From my perspective Hess did the right thing when he brought him in.” Under the Texas Code of Criminal Procedure, a licensed peace officer has a duty to report a crime in his jurisdiction to the district attorney. In 1996 DeRouselle stole a roommate’s checks, forged his name and cashed the checks. He received five years deferred adjudication and fined \$500 ...

Texas Tech linebacker Dorian Pitts and defensive back Derrick Briggs were arrested and charged with marijuana possession in Lubbock. A SWAT team executed a search warrant at the apartment of one of the players and allegedly found 31.91 grams of a green leafy substance and 0.42 grams of a white powder in a plastic bag ...

Florida State All-American kicker, Sebastian Janikowski was charged with trying to bribe a police officer. Janikowski skipped his senior year and made himself available for the NFL. However, if convicted of bribery, a third-degree felony, Janikowski faces deportation back to his homeland of Poland ...

Randy Moss was fined \$40,000 for squirting a water bottle at a referee. Moss’ second fine of the season, the 1st being a \$10,000 fine for verbally abusing a referee, was handed down by commissioner Paul Tagliabue and came after Moss squirted field judge Jim Saracion during a game with the Rams ...

Cecil Collins, formerly with the Miami Dolphins, does not look to be playing any time soon. Circuit Judge Dale Ross ruled a waiver of extradition from Louisiana was valid, but Florida would have the first shot at Collins, jailed for probation violations, and Florida would not have to give Louisiana its chance until Florida was through. The Miami Dolphins waived Collins and he continues to sit in the Fort Lauderdale, Florida jail...

Prosecutors are seeking the death penalty against former NFL player Rae Carruth and 3 other men charged with the shooting death of Carruth’s pregnant girlfriend. The Mecklenburg County District Attorney’s office will attempt to persuade a jury that death is the penalty for the 4 men who are charge with murder, conspiracy and intent to kill an unborn child. Carruth, a first-round pick in 1997 by the Carolina Panthers, is said to have instigated the plot to kill his former girlfriend, pregnant with Carruth’s child, although one of the other three men has been identified as the shooter. Carruth is the first active player in NFL history to be charged with murder ...

All-Pro linebacker Ray Lewis, arrested Jan. 31, becomes the second active player in NFL history to be charged with murder, specifically, two murders. The suspended Baltimore Ravens linebacker, had bail set at \$1MM, was ordered not to leave the state, and to be at home by 9 p.m. Lewis’ role in the stabbing deaths of two men is under investigation. Lewis was indicted on two counts of malice murder, felony murder and aggravated assault. Lewis associates’ Reginald Oakley and Joseph Sweeting, both with long criminal records, were also indicated on the same charges related to a post Super Bowl party outside an Atlanta bar...

And to prove they never forget, former Dallas Cowboy Thomas “Hollywood” Henderson announced his plan to seek a position on Austin’s City Council. However, Henderson, who had convictions in 1984 for one count of sexual assault and 2 counts of false imprisonment in Long Beach, California, was informed by the secretary of state’s office that Texas law prevents convicted felons from running for elected office. The exception would have been if Henderson had been pardoned or his record otherwise cleared. Elizabeth Hansaw, legal director for the elections division, said “the law is pretty clear in this area.” ...

Sylvester R. Jaime  
Editor

## Entertainment Records and More:

AOL and George Orwell? The time is here, 1984. AOL members complain that AOL cuts them off, threatens them, better clean up your act, or your children's language or despite your payment, AOL will cut you off. Where are the 1st Amendment advocates? No notice, and if your child uses language offensive to AOL your e-mail, access to internet, etc., are cut off. Does the agreement, an internet agreement with no signatures, give AOL the right to limit your web access? Where are the antitrust lawyers, first amendment lawyers, etc.? Is AOL too much to take on? ...

Paramount Pictures, 20th Century Fox, etc. sued to stop the use of copying programs on the internet. And they won! A preliminary injunction was issued to stop the posting and copying of programs on the net. The program unscrambles security codes on DVDs. The studios issued a "wake-up call" to thieves, do not steal intellectual property. Bootleggers of digital video discs beware, the studios will protect themselves ...

Cyberspace virus and sex, "Melissa which did more than \$80 million in damage ... was sent to the joint!" David L. Smith, 31, was credited with creating the "Melissa" virus and then claimed that he didn't anticipate the amount of damage the virus cause. John Farmer, New Jersey Attorney General, did not believe him. Farmer was quoted as saying "I think he intended to do exactly what was accomplished — a total disruption of worldwide communications." The Melissa virus, named for a topless dancer, infected e-mail to the first 50 names in a computers user's address book. Thousands of e-mail systems were disguised as "important messages" and spread through the world. Smith admitted to using a stolen screen name and AOL. Investigators working together with state authorities succeeded in getting Smith jail time and a \$10,000 fine for crashing 6,000 computers with the virus ...

Hackers!. What makes people think this way? And people wonder why there are lawyers? Kevin Mitnich, from LA, wants to go to college. Judge says its O. K. Just don't touch computers. Christopher Painter, U. S. Attorney, was successful in persuading U. S. District Judge Marianna Pfaelzer to bar Mitnich from using computers, software, the internet, modems or peripheral gear, cell phones, internet-connected televisions or any other electronic equipment that could be used to access a computer system or the internet. After being sentenced to 5 years and being released from Lompoc Federal Correctional Institute, Mitnich went on CBS and said "[H]e did it for fun, never for profit." Despite causing computer system disruptions, Mitnich tried to convince the judge that he should be able to use computers, etc. in pursuing his college degree ...

Corpus Christi based Freddie Records' founder Freddie R. Martinez, Sr. was indicted on a tax fraud charge. Prosecutors allege Martinez failed to report sales revenues in 1992 and 1993 ...

La Troopa F, filed bankruptcy in the Western District of Texas. The Tejano group listed debts of between \$100,000 and \$500,000 and assets of about equal value. The group, one of the most popular and successful Tejano's bands, is seeking to reorganize its finances and avoid foreclosure by the IRS and various merchandisers ...

Old Blue Eyes, gone but not forgotten. Frank Sinatra Jr. was kidnapped and a ransom of \$240,000 was paid. After spending 4 years in prison, mastermind Barry Keenan wants to write his story. But a California statute says a felon cannot profit from the story of his wrongdoing. The "Son of Sam" statute was adopted by California and other states and is being challenged as a violation of free speech. Keenan was a successful business man and argues that having spent the time in prison, i. e., having paid his debt to society, has a story to sell. Stephen Rohde, Keenan's attorney, argues that "you cannot marginalize his speech just because he was a criminal many years ago." Keenan's details of the plot to squeeze cash from the

senior Sinatra for his son, is a saga sure to be a best seller. The California Supreme Court however may not agree with Keenan's right to make a cent from his story ...

Was Opra right? Supreme Beef Processor, Inc. of Dallas, recalled 180,000 pounds of beef. The ground beef was alleged to be contaminated with e coli bacteria. The Department of Agriculture threatened to withdraw federal meat inspectors if Supreme did not improve safety procedures. The ground beef was sold in Texas, Oklahoma, Arkansas, Louisiana, Tennessee, Mississippi, Florida and New Mexico ...

Sylvester R. Jaime  
Editor

## A review of some of the reasons agents and lawyers are into sports:

### •Baseball

1. Juan Gonzales-Detroit Tigers-8 year contract \$140 million, \$17.5 million/year
2. Derek Jeter-New York Yankees-7 year contract \$118.5 million, 16.9 million/year
3. Kevin Brown-LA Dodgers-7 year contract \$105 million, \$15 million/year
4. Shawn Green-LA Dodgers-6 year contract \$84 million, \$14 million/year
5. Mo Vaughn-Anaheim Angels-6 year contract \$80 million, \$13.33 million/year

Question: Who will be the first billion dollar athlete?

•NASCAR'S \$2.8 billion television contract with NBC, Fox and Turner Sports (\$1.2 billion for NBC/Turner Sports through 2006, and \$1.6 billion for Fox through 2008).

•College basketball deal between NCAA and CBS for 11 years, \$6 billion (\$540 mm/year for 26 broadcast windows!).

•Swiss based ISL, continued efforts its billion dollar effort to break ABC's hold on college football, but the NCAA electing to extend the deal with ABC for only millions of dollars.

•"Tiger Mania", \$150MM to charity by the PGA Tour, the top 8 players on the PGA Tour having lifetime earnings in excess of \$10MM and Tiger Woods, a pro since 1996, having won over \$13MM. The Senior PGA Tour Senior Skins Game with purses of \$600,000 and more..

•College Leagues:	1997-98 Revenues*
Big Ten	\$75.9 million
SEC	\$74.8 million
ACC	\$68.2 million
PAC-10	\$48.0 million
Big East	\$47.8 million
Conference USA	\$15.8 million
Atlantic 10	\$7.0 million
WAC	\$3.9 million

The amount of revenue that 29 Division I-A leagues was based on league tax returns. 20 Division I Leagues produced from \$900,000 to \$3 million in revenue per year.

\*Source Houston Chronicle 12/20/99.

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Margaret E. Watson. *Unauthorized Digital Sampling In Musical Parody: A Haven In The Fair Use Doctrine?* 21 W. NEW ENG. L. REV. 469 (1999).

**SYMPOSIA**

*Symposium: The Modes Of Law: Music And Legal Theory: An Interdisciplinary Workshop*, 20 CARDOZO L. REV. 1325 (1999).

# CENTRAL TITLE

Music Publishing Administration • Royalty Collections

Music Clearance • Copyright Management

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## Entertainment Law Institute

March 17 & 18, 2000 - The Four Seasons Hotel - 98 San Jacinto Boulevard - Austin, Texas

### FRIDAY MORNING, MARCH 17, 2000

Presiding Officer: Mike Tolleson, Austin

#### 8:00 a.m. LATE REGISTRATION

Ballroom foyer. The Four Seasons Hotel. Telephone (512) 478-4500. Continental breakfast to be provided.

#### 8:50 a.m. WELCOMING REMARKS

#### 9:00 a.m. THE BAND BUSINESS: LEGAL ISSUES FOR EMERGING ARTISTS – (1.50 hours including 0.25 hour ethics/PR credit from 10:15 – 10:30)

This panel will discuss the initial legal issues which must be addressed by attorneys in representing emerging artist in the music business: business structure, third party agreements (management, agency, investment) and trademark issues. The panel will also briefly outline the roles of various advisors to emerging music artists (attorney, personal manager, accountant/business manager, and talent agent) and discuss related conflicts and ethical issues.

Kenneth Abdo, Minneapolis, Minnesota  
Paul J. Friedman, Los Angeles, California  
Roger Skelton, New York, New York

#### 10:30 a.m. BREAK

#### 10:45 a.m. REPRESENTING MINORS IN THE ENTERTAINMENT WORLD – (0.50 hour)

An exploration of the various contractual, statutory (including probate, guardianship and tax) and practical considerations and issues involved in representing minors *vis a-vis* the entertainment industry in Texas and other selected states.

Lawrence A. Waks, Austin, Texas

#### 11:15 a.m. WHEN BANDS BREAK UP – (0.75 hour)

What happens to the name, master tapes, musical compositions and other assets?

David Garcia Jr., San Antonio, Texas  
Iris J. Jones, Austin, Texas

#### 12:00 p.m. LINCHON PRESENTATION – OPTIONAL – (0.50 hour)

Tickets may be purchased in *advance only* for \$17.00.

Speaker: Michael Greene, President/CEO  
The National Academy of Recording Arts & Sciences  
Santa Monica, California

Topic: The Recording Academy: Past, Present and Future

### FRIDAY AFTERNOON, MARCH 17, 2000

Presiding Officer: Cindy Lazzari, Austin

#### 1:30 p.m. FILM FINANCE AND PRODUCTION: THE NEW TEXAS LEGISLATION – (0.50 hour)

A general discussion of bank financing of motion pictures leading to an explanation of the Texas Film Development Act, subsequent Regulations issued by the Comptroller's Office. It's effect on such bank loans and its current status.

Michael Norman Saleman, Austin, Dallas & Los Angeles

#### 2:00 p.m. REPRESENTING TALENT IN FILM AND TELEVISION – (1.00 hour)

A discussion of the substantive provisions in actor's agreements for motion pictures and television, with particular emphasis on how the terms of such agreements change as the actor's career develops. Director's agreements for film and television will also be discussed.

Tom Hunter, Beverly Hills, California  
Jeffrey A. Korcheck, Los Angeles, California

#### 3:00 p.m. BREAK

#### 3:15 p.m. LITERARY BOOK DEALS – (0.50 hour)

A concise overview of the standards, latest developments, and technological underpinnings of book publishing deals. Multimedia content applications discussed as well.

Evan M. Fogelman, Dallas and New York

#### 3:45 p.m. MUSIC FOR INDEPENDENT FILM – (1.50 hours)

The panel will present an overview of the legal and business affairs issues in acquiring music for independent films, either by hiring a composer or by clearing licensing music from third parties. The roles of production music attorney, music supervisor and music licensor will be discussed.

Mark Leviton, Burbank, California  
Dawn Soler, Los Angeles, California  
Steven Winogradsky, North Hollywood, California

#### 5:15 p.m. ADJOURN

### SATURDAY MORNING, MARCH 18, 2000

Presiding Officer: Steven Winogradsky, North Hollywood, California

#### 9:00 a.m. ETHICS: AVOIDING AND DEFENDING MALPRACTICE CLAIMS AGAINST ENTERTAINMENT LAWYERS – (0.75 hour ethics/PR credit)

What can you be sued for? Who can sue you? How can you avoid being sued? What to do if you are sued? Should you buy legal malpractice insurance?

Steve McConnico, Austin, Texas

#### 9:45 a.m. MUSIC ON THE INTERNET: OVERVIEW OF COPYRIGHT ISSUES – (0.67 hours)

A look at the basics of music copyright law and at Internet related issues such as the digital transmission right and the Audio Home Recording Act.

R. Anthony Reese, Austin, Texas

#### 10:25 a.m. BREAK

#### 10:40 a.m. MUSIC ON THE INTERNET: INDUSTRY DEVELOPMENTS – (1.33 hours)

The panel will discuss the growing presence (both legally and illegally) of music on the Internet. The discussion will focus on the procedures for obtaining licenses for both the performance and the reproduction of musical compositions and sound recordings.

Moderator: Steven Winogradsky, North Hollywood, California  
Adam Mirabella, New York, New York  
Marc Morgenstern, New York, New York  
Rick Riccobono, Santa Monica, California

#### 12:00 p.m. LUNCH PRESENTATION – OPTIONAL – (0.50 hour)

Tickets may be purchased in *advance only* for \$18.00.

Speaker: Jim Griffin, Los Angeles, California  
Topic: The Future of Music on the Internet

### SATURDAY AFTERNOON, MARCH 18, 2000

Presiding Officer: Lawrence A. Waks, Austin

#### 1:30 p.m. THE ECONOMICS OF THE MUSIC BUSINESS FOR PERFORMING AND RECORDING ARTISTS – (1.25 hours)

A discussion and analysis of revenue streams from record deals, touring and merchandising. *Publishing is not covered.* A discussion of auditing if time permits.

Aaron Schechter, Westport, Connecticut

#### 2:45 p.m. ENTERTAINMENT LAW LITIGATION: WHEN THINGS GO AWRY – (0.75 hour)

A review of contract disputes and other disagreements that commonly arise in the music industry; and litigation claims involving recording artists, bands, personal and business managers and record companies.

Ladd A. Hirsch, Dallas, Texas  
J. Preston Randall, Austin, Texas

#### 3:30 p.m. BREAK

#### 3:45 p.m. SAMPLING FROM A TO Z – (1.50 hours)

This panel will give an overview of all elements involved in "sampling" in the recording industry. Specifically, the panel will discuss 1) the legal concepts which give rise to the need to clear samples; 2) the basic definition of "sampling" in both musical compositions and sound recordings [with audio examples]; 3) the procedure involved in clearing samples; and 4) the basic provisions contained in sample agreements.

Edward Z. Fair, Austin, Texas  
Dag Sandsmark, New York, New York  
Eric D. Weissman, New York, New York

#### 5:15 p.m. ADJOURN TO RECEPTION

#### MCLE

An application for accreditation for this activity has been submitted to the MCLE Committee of the State Bar of Texas and is pending. It is expected that this program will be accredited by the State Bar of Texas for up to 13.50 hours of Continuing Legal Education credit (including 1.00 hour for the two luncheons), of which up to 1.00 hour will apply to the legal ethics/professional responsibility requirement. Credit in other states also is available. CPA's may obtain 16.00 hours of CPE credit toward licensing with the Texas State Board of Public Accountancy. Sponsor #250

### STATE BAR OF TEXAS

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