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TESLAW

THE STATE BAR OF TEXAS ENTERTAINMENT & SPORTS LAW SECTION

July 16, 2018

TESLAW Tidbits:

A Little Taste of TESLAW

July 15, 2018

Issue No. 29

Dear Section Members,

Welcome to our Quarterly Newsletter! Back in 2013, we founded TESLAW Tidbits with the goal of providing our members with up-to-date Entertainment Law News and Resources. We hope you've enjoyed this newsletter and would love to have you contribute! Whether you have a killer article or case notes you've been trying to get published, or you'd like to be featured in our Attorney Spotlight section and increase your practice's visibility, our newsletter provides a great platform! Please send contributions to Editor-in-Chief, [Erin Rodgers](#).

Stay tuned for more information on our 28th Annual Entertainment Law Institute in Austin. This is our biggest CLE event of the year and a great opportunity to meet and network with fellow entertainment law attorneys! Information on future events can be found through our [website](#).

I look forward to meeting each of you in person. I am always reachable via email [here](#). I look forward to serving as your chair for 2018-19!

Sincerely,

[Victoria Helling](#)

TESLAW Chair

[Entertainment and Sports Law Section](#)

Events Calendar

Entertainment Law Institute, TESLAW

Austin --- November 8-9, 2018

Spotlight on Phil McNicholas



Phil is an attorney with Kessler Collins law firm in Dallas who focuses his practice on sports-related legal matters and general business disputes. Prior to attending law school at SMU, he worked for the Orlando Magic and Conventions, Sports & Leisure International (CSL), which is now a part of Legends. Some of Phil's recent matters include reviewing and advising on all contracts submitted by the city of Dallas for its bid to host the 2026 FIFA World Cup, defending sports agents in investigations conducted by the Texas Secretary of State's office, and assisting retired NFL players in their efforts to obtain injury benefits. Phil is the current Chair of the Dallas Bar Association's Entertainment, Art and Sports Law section and serves on the outreach committee for the Sports Lawyers Association.

Phil can be reached [here](#).

Agents and O-1 Extraordinary Ability Visas

By Andrew G. Thorley

O-1 Nonimmigrant Visa Basics

As foreign nationals seek viable options for staying and working in the United States, those who have extraordinary ability in the arts, athletics, business, education or sciences should not overlook the O-1 visa as defined within the Immigration and Nationality Act (INA) §101(a)(15)(O). Foreign nationals who have been recognized nationally or internationally for their achievements often are strong O-1 candidates, as are those with a demonstrated record of extraordinary achievement in the motion picture or television industry.

For US agents with credentials, helping clients who qualify to perform or appear in the United States as beneficiaries of an O-1 petition can add tremendous value, especially in a climate of increased scrutiny on immigrants where careful planning is necessary. This visa category offers considerable flexibility, especially for those artists and performers who have an itinerary of performances or similar events.

O-1 Petition Evidence Planning

Presenting strong supporting evidence to show extraordinary ability requires careful planning, but when properly done the O-1 permits an initial stay of up to three years without any quota that limits the number of visas available per year, so long as the individual can demonstrate plans to work in their particular field in the United States. A proper advisory opinion letter and providing a clear context for the individual's extraordinary work are both key pieces within the Temporary Worker Petition that an employer must file with USCIS for each O-1 foreign national beneficiary. Although U.S. Citizenship and Immigration Services ("USCIS") lists general information [here](#), partnering with an experienced immigration attorney can help to avoid pitfalls.

Roles for US Agents

US agents who file as an O-1 petitioner can facilitate future events to be added to an approved itinerary possibly without needing further USCIS review. This option can be particularly attractive in fields where individuals may either traditionally be self-employed or normally use agents to arrange for short-term employment with numerous employers. In practice, providing a specific and detailed initial itinerary with the O-1 petition will be essential in such instances, ideally accompanied by contract agreements for employment and other evidence that shows what activities will be undertaken by the O-1 beneficiary while in the United

States.

Within the O-1 framework as interpreted by USCIS, the US agent can perform a few key roles, including the option to act as an employer in filing the O-1 petition itself. The standard for who can qualify as an agent for these purposes allows for some flexibility, but documents filed with the O-1 petition will vary, depending on the role that the US agent assumes. In certain instances, it is possible for the US agent to serve as the representative of both the O-1 beneficiary and other (multiple) employers, or even to act on behalf of either a foreign employer or individual that an employer has designated as its representative. In so doing, the U.S. agent must establish the authority to act within the scope of the O-1 petition filing, pursuant to regulations at 8 CFR §214.2(o)(2)(iv)(E).

Filing an O-1 petition while involving the US agent can be an attractive option to consider for foreign national clients. With careful planning and detailed supporting evidence presented to USCIS, the O-1 visa strategy can prove to be a great fit.

Licensed in Texas and located in Ogletree Deakins' Austin location, Andrew's primary focus of practice is immigration, including representing athletes, entertainment organizations, musicians, and professional sports teams. Andrew can be reached [here](#).

Practice Document

The [practice document](#) is a sample Publicity/Performance Release to acquire rights to use an individual's interview, photograph, name, or other materials ("ID Materials"), which is provided by [Danica Mathes](#). This document can be used by film or TV producers, companies, or not-for-profit organizations to obtain permission and protection for using ID Materials in a production, video testimonial, or promotional material. Danica is a partner with [Bell Nunnally](#) in Dallas, Texas, and her practice focuses on entertainment, advertising, intellectual property and new media law. Visit her blog, [I'M WITH THE B\(R\)AND](#).

Send questions, comments, and submissions for TESLAW Tidbits

to Erin Rodgers at erin@rogersselvera.com.

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