



HOLLYWOOD

PRODUCTION

DIRECTOR

CAMERA

TAKE

Entertainment opportunities are everywhere. Regardless of your specialty, you never know when or how they may make their way into your practice. The key is to recognize the potential for entertainment law to arise in any case or from any client. Remind yourself—everything is negotiable, and you must get any agreement in writing. Now you are ready for that close-up.

By ETHAN BORDMAN

When Entertainment Law Makes a Cameo

An Insider's Guide to Issues That May Be Relevant in Your Practice Area

You may think your practice is far removed from the movie and television industry, but entertainment law issues may still arise. In 2011, a Broward County, Fla., judge ruled that defense attorneys would be permitted to examine the contracts for two deputies who appeared on the reality TV show “Police Women of Broward County.”¹ At issue was the question of whether show business was influencing law enforcement. The defense attorneys were concerned that these officers were paid to “manufacture arrests” for the show.² Discovery Communications, the parent company of TLC, the network that broadcast the show, cited trade secrets as a defense.

Broward County Circuit Court Judge David Haines based his decision on whether the importance of TLC’s trade secrets outweighed the rights of two defendants sitting in

jail. The judge ruled in favor of the defendants.³

I once received a call from a personal injury attorney whose client unwittingly found her on a reality TV show. As the client returned to her parked car, she was surprised—not to mention irritated—to find a parking ticket. Surprise turned to shock when a camera crew from a reality show, which observes parking authority officials and the people they ticket, approached and proceeded to record her explicit statements of frustration and anger upon discovering the ticket. Her attorney wanted to know what, if any, legal action this woman could take against the reality show for recording her without her consent.

Movie and TV Filming: Out of the Studio and into Our Communities

Entertainment productions are no longer the exclusive business of Hollywood. Now, filming occurs on the streets of our local communities. Some time ago, I received a call from a real estate attorney in Illinois whose client was contacted by a production company interested in using the client’s home as a movie set. Suddenly this attorney—well-versed in terms such as “chain of title,” “acceleration clause,” and “amortization”—found himself working with unfamiliar terms such as “back end points,” “piece of the gross,” “pay-or-play,” “below-the-line,” and “above-the-line.” “Where is this line?” he joked.

Perhaps the most important factor for productions filmed

outside of Hollywood, and one that influences location choice, are government financial incentives. These incentives, which range from 20 to 40 percent of money spent on a production, are provided by states in the form of tax credits and rebates to filmmakers for monies spent on productions in local communities. Currently, more than 40 states offer some form of financial incentive designed to attract movie projects and the economies they create. An entertainment project brings revenue to a variety of local business owners, including hotels, restaurants, catering companies, car rental agencies, and office spaces—all of which may experience a production-related surge in business. Moreover, local professionals are hired to assist with various aspects of the production. If the experience is successful, the producers may choose to return to the same location for another project. Last year, a securities lawyer colleague sent me photos of Samuel L. Jackson filming “Captain America: The Winter Soldier” in front of his downtown Cleveland law office. He told me how excited Clevelanders were, not only to have a major motion picture filmed in their city, but also because of the financial boost it gave to local businesses.

Entertainment Law Is Everywhere

On the first day of my first entertainment law course—entertainment law and music contracts—my professor began with a thought-provoking declaration: “There is no such thing as entertainment law.” We students were taken aback, looking around to gauge our classmates’ reactions. He continued on to clarify this statement by explaining that—unlike laws of contracts or laws of torts—laws of entertainment do not exist; rather, entertainment law is the application of any legal topic to the unique field of the entertainment industry.

Get It in Writing Anyway

Film producer and studio founder Samuel Goldwyn famously stated that “a verbal contract isn’t worth the paper it’s written on,”⁴ but in the entertainment business, unsigned does not mean unenforceable. A film production begins with a contract, usually to purchase the rights to the screenplay. In the entertainment industry, tight production timelines force studios to “lock down” a script, or an actor’s services, quickly; as a result, formal written contracts may be left unexecuted. Though it was written some time ago, in a 1993 op-ed piece in the *Los Angeles Times*, Oscar-winner Charlton Heston proudly claimed, “I’ve made more than 60 films; I’ve never signed a complete contract on any of them before production began ... usually it’s some time after the film’s finished.”⁵ One case that illustrates the existence of a contract—despite the fact that no formal writing was executed—was that of *Main Line Pictures, Inc. v. Basinger*,⁶ a case entertainment law students are sure to read about. In this case, a production company filed suit against actress Kim Basinger for breach of both oral and written contracts after she reversed her decision to star in the film “Boxing Helena.” After agreeing to perform in the lead role, attorneys for Basinger and Main Line had, through deal memos, agreed upon the terms of employment. Soon thereafter, formal agreements, including the Acting Service Agreement, were drafted. Following the exchange of numerous drafts between the parties, they revised and eventually agreed upon many ancillary

terms—though they never signed a long-form contract. Some time later, after learning of Basinger’s decision not to act in the film, Main Line filed suit. The court noted: “Because timing is critical, film industry contracts are frequently oral agreements based on unsigned ‘deal memos.’”⁷ At the time of this suit, Ms. Basinger had executed written agreements for only 2 of her last 12 films.⁸ The jury ruled, based on these actions and writings, that Ms. Basinger had entered into both oral and written contracts. The case was later settled.

Robert Evans, producer of such films as “Chinatown” and “The Godfather,” once stated: “There are three sides to every story: yours ... mine ... and the truth. No one is lying. Memories shared serve each differently.”⁹ Just as everything is negotiable in a contract, the court’s determination of whether a contract exists depends on the facts and circumstances. Be sure to get all agreements in writing before your client participates in a project because written contracts are less likely to be called into question than someone’s memory.

Son of Sam Laws: Can Criminal Activity Result in a Financial Windfall?

There are always high-profile criminal cases in the news. O.J. Simpson, Casey Anthony, George Zimmerman, and Jodi Arias have all captured the attention of the national media and the public. As these cases develop, we often learn that the accused has received offers from publishers, television networks, and movie studios to tell his or her story for large compensation. As an attorney, you may have been asked by friends and neighbors if these individuals can keep the money, potentially profiting from the alleged crime? Son of Sam laws may lead one to believe the answer is no. But, in fact, the answer is, “It depends.”

Individuals have attempted to benefit from their crimes for more than a century. One of the first such documented cases is *Riggs v. Palmer*.¹⁰ In 1889 Elmer E. Palmer poisoned his grandfather, Francis Palmer, upon learning that Francis was planning to change his will and disinherit Elmer. In addition to Elmer, Francis Palmer’s two daughters were each to receive an inheritance. Upon Francis’ death his daughters filed to have Elmer eliminated from the will as a result of his actions and criminal conviction. The trial court disallowed Elmer’s inheritance, ruling that it would be offensive to public policy for him to receive it.¹¹ However, in a dissent, Judge John Clinton Gray stated that Elmer’s criminal punishment satisfied the demands of public policy and that the law was silent on whether or not he could benefit from his crime.¹²

Between July 1976 and August 1977, David Berkowitz terrorized New York City, killing six people and injuring numerous others.¹³ Berkowitz called himself the “Son of Sam,” explaining that the black Labrador retriever owned by his neighbor, Sam Carr, told him to commit the killings.¹⁴ Once captured, Berkowitz received numerous offers to have his story published.¹⁵ In an effort to thwart criminals’ attempts to profit from their crimes, New York State passed the first Son of Sam law (N.Y. Exec. Law § 632-a), authorizing the state crime board to seize any money earned from entertainment deals to compensate the victims.¹⁶

In 1991, in *Simon & Schuster v. Crime Victims Board*,¹⁷ the U.S. Supreme Court overturned the New York code, stating

that it violated the First Amendment. In *Simon*, the New York Crime Victims Board originally told author Nicholas Pileggi that he would have to turn over all proceeds from his book *Wiseguy: Life in a Mafia Family*, a biography about mobster Henry Hill. Hill's story was later turned into the 1990 Martin Scorsese film *GoodFellas*, starring Ray Liotta, Robert De Niro, and Joe Pesci. The Court stated that the law interfered with the content of an individual's speech and that the definition of "person convicted of a crime" was overinclusive, allowing the crime board to take money from anyone who admitted to committing a crime, regardless of whether or not they were convicted. The Court emphasized that this would have prevented hundreds of works from authors such as Dr. Martin Luther King, Jr.,¹⁸ who was arrested during a sit-in at a restaurant; Sir Walter Raleigh, who was convicted of treason; and Henry David Thoreau, who was jailed for his refusal to pay taxes.¹⁹ Interestingly, the law named after him never applied to David Berkowitz, who was deemed incompetent to stand trial.²⁰ Berkowitz voluntarily paid his book royalties to the crime board,²¹ and New York has since amended its law.

In 2002 California addressed the constitutionality of its own Son of Sam law, California Civil Code Section 2225,²² which it passed in 1983.

In the case of *Keenan v. Superior Court of Los Angeles County*,²³ which involved the sale of a story on the kidnapping of Frank Sinatra, Jr. In 1963 Barry Keenan, Joseph Adler, and John Irwin kidnapped Frank Sinatra, Jr., then 19, from Harrah's casino in Lake Tahoe. The three kidnapers were later caught and, in 1998, after serving time in prison, they met with a reporter from the Los Angeles *New Times* newspaper for an interview. The article entitled "Snatching Sinatra" generated interest, and Columbia Pictures bought the motion picture rights for \$1.5 million.

Frank Sinatra, Jr., asked Columbia Pictures to withhold payment, but the studio refused barring a court order. Sinatra, Jr., then stated the payment violated section 2225 and the money received should be placed in a trust for his benefit as the victim of the crime. In tendering its 2002 decision, the Supreme Court of California stated that the *Simon & Schuster* decision governed the case because of similarities between the New York and California statutes. The court was persuaded by Keenan's argument that, like the New York statute, California's section 2225 was overinclusive, as it confiscated all of a convicted felon's income from expressive activity, which included more than a passing mention of the crimes. The Supreme Court said this financial disincentive "discourages the creation and dissemination of a wide range of ideas and expressive works which have little or no relationship to the exploitation of one's criminal misdeeds."²⁴ The opinion further stated:

[a] statute that confiscates all profits from works which make more than a passing, nondescriptive reference to the creator's past crimes still sweeps within its ambit a wide range of protected speech, discourages the discussion of crime in nonexploitative contexts, and does so by means not narrowly focused on recouping profits from the *fruits of crime*.²⁵

The state supreme court ruled that section 2225 was invalid, thus reversing the lower court's decision, and California has since amended its law. The following year, the film *Stealing Sinatra* was released, starring David Arquette as Barry Keenan and William H. Macy as his coconspirator John Irwin.

Profiting from Notoriety

When an individual is not compensated to recount his criminal act but rather uses the notoriety or popularity resulting from the accusation or conviction, he may be entitled to keep any money received. In 2010, former Illinois Gov. Rod Blagojevich (D) was removed from office and later convicted of lying to federal authorities amid corruption charges alleging he plotted to sell the U.S. Senate seat vacated by Barack Obama.²⁶ While awaiting trial, Gov. Blagojevich served as a paid spokesperson for Wonderful Pistachios in the "Get Crackin'" advertising campaign, a move designed to capitalize on his notoriety.²⁷ Despite Illinois' Elected Officials Misconduct Forfeiture Act,²⁸ a Son of Sam bill for politicians designed to "recover all proceeds traceable to the elected official's offense," Gov. Blagojevich was allowed to keep the money because the ads were not traceable and made no mention of the criminal charges against him. Moreover, federal law 18 U.S.C.S. § 3681, Special Forfeiture of Collateral Profits of Crime, establishes that proceeds "relating to a depiction of such crime" can be forfeited upon a motion by the U.S. attorney after conviction. Although he was later convicted, Gov. Blagojevich kept the money from these ads, as enjoying pistachios was not considered a depiction of lying to federal authorities.

In another example of profiting from notoriety, 17-year-old Amy Fisher was accused in 1992 of the attempted murder of Mary Joe Buttafuoco, the wife of Fisher's 36-year-old alleged boyfriend.²⁹ Fisher received \$80,000 for a bail payment from a television production company in exchange for the rights to her story.³⁰ This was permitted since she had not yet been convicted of a crime.

Following the Letter of the Law Can Yield Profits

Following the letter of the law can also result in avoiding Son of Sam laws. In July 2010, Colton Harris-Moore—named "America's Most Wanted Teenage Bandit" by *Time*³¹—was captured and accused of committing more than 70 crimes, including theft of airplanes, luxury vehicles, and pleasure boats totaling more than \$3 million.³² At the time Harris-Moore had 75,000 Facebook followers,³³ learned how to fly a plane by reading an aviation manual, and avoided capture for two years. In Washington, the state from which Harris-Moore escaped from a halfway house where he was serving a sentence for burglary, the "payment for reenactments of crimes" statute applies.³⁴ The statute prohibits the receipt of money to the individual of a crime for the portrayal of the "accused or convicted person's thoughts, feelings, opinion, or emotions regarding such crime," stipulating that any such revenue should be "for the benefit of and payable to any victim or the legal representative of any victim of crimes committed."³⁵ The statute defines a "victim"³⁶ as "a person who suffers bodily injury or death as a proximate result of a criminal act of another person." There were, however, no allegations that Harris-Moore hurt anyone physically;³⁷ therefore the state's Son

of Sam law should not apply to him.

In cases where the law allows a convicted person to keep the money, prosecutors typically offer a plea bargain to a lesser charge or recommend less jail time in exchange for turning over the money to compensate victims and their families. As part of a plea deal, Harris-Moore gave up the rights to the proceeds from entertainment deals on his story.³⁸

One New York case, which followed the Son of Sam law to the letter, had an unexpected twist. In January 2011, 24-year-old Brandon Palladino was charged with the 2008 killing of his mother-in-law Dianne Edwards.³⁹ A year after the killing, Palladino's wife Deanna, the victim's only child—and the sole beneficiary of her mother's entire estate—died of an alleged drug overdose. Because Palladino and Deanna had no children, he stood to inherit the entirety of Edwards's estate through his wife after he would be released from prison. The Son of Sam law does not apply here, because Palladino's inheritance will not come directly from his victim or the commission of the crime, but rather from his wife—who had inherited it from the victim. Moreover, there were no allegations that Deanna had anything to do with her mother's death. According to a news source, the Suffolk County District Attorney's office asked Palladino, who plead guilty to manslaughter, to give up the inheritance as part of a plea bargain, but he refused.⁴⁰ The value of the estate was estimated at \$241,000. Furthermore, the victim's daughter had used an additional \$190,000, which was inherited from her mother's savings account, to pay for her husband's defense. Therefore, the victim, in effect, paid for her accused killer's defense and left him a substantial inheritance.

The Son of Sam law does not apply to Palladino; however, in 2012, Suffolk County Circuit Court Surrogate Judge John M. Czygier, Jr., held that under the Slayer Rule, Palladino—as an intentional killer—forfeited his right to inherit from the estate of his victim and the estate of the victim's post-deceased legatee.⁴¹ The Slayer Rule establishes that a person who commits an intentional killing cannot benefit by inheriting under the deceased individual's estate.⁴² This trusts and estates law stands in contrast to the Son of Sam law, as under the Slayer Rule, the individual does not need to be convicted of a crime. The court explained, “but for Brandon Palladino's actions, there would be no inheritance through his wife, Deanna.”⁴³ Regarding the “but for” analysis, the court stated: “[T]he direct result therefrom (decedent's death) should prohibit him from obtaining the fruits of such act even though they may be obtained through an intervening estate.”⁴⁴

Can Media or Literary Rights Serve as Payment for Legal Services?

Discussions of the Son of Sam laws often give rise to questions about whether attorneys may receive the client's media or literary rights as payment for legal services. This issue arose in *State of Florida vs. Casey Marie Anthony*, the 2011 case of the Florida mother who was ultimately found not guilty of killing her two-year-old daughter, Caylee. The prosecution was concerned that Anthony's attorney, Jose Baez, was being compensated with book or movie deals, which could influence his actions in the representation of Anthony.⁴⁵ Baez and Ms. Anthony filed affidavits with the court stating that there was no

agreement for the sale of her story by Baez.

The American Bar Association (ABA) Models Rules of Professional Conduct on Conflicts of Interest with Current Clients, Rule 1.8(d) states: “Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.”⁴⁶ The ABA *Comments* to the rule state:

[a]n agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation.⁴⁷

One such detraction is that a lawyer may be tempted to subordinate the client's best interests by pursuing a course of conduct that will enhance the value of the story to the client's detriment. One illustration, not provided in the comments, is that the value of a client's story is most likely worth more if a verdict occurs—as opposed to reaching a quiet or confidential settlement—even though the latter might be in the client's best interests. The comments also distinguish that it *is* permissible for an attorney's fee to consist of a share in ownership when representation of a client in a transaction concerns a literary property—so long as the fee conforms to Rule 1.5.⁴⁸ This is allowed, as there has been a conclusion of the client's case. Although the issue of the attorney's opportunity to write about the representation is not addressed in the ABA rules, some states' Rules of Professional Conduct address that attorneys should not enter into arrangements to sell *their* stories about the representation until all aspects have been concluded.

You (Or Anyone) Can Still Write It

Though Son of Sam laws may be enforceable, their purpose is to prevent criminals from profiting as a result of their crimes; they cannot stop an individual from writing about their experiences. Under the First Amendment, any individual is free to write about a public occurrence because permission from any subject, criminal or not, is not required to recount the events—as long as they are represented truthfully and accurately. Most states' Son of Sam laws only prevent the convicted and/or legal representative from profiting.

In March 2013, Christopher Porco sued the Lifetime Network after it produced the telefilm *Romeo Killer: The Christopher Porco Story*, based on the true story of his 2004 conviction for murdering his father, Peter, and attempting to murder of his mother, Joan.⁴⁹ Porco claimed the film violated New York Civil Rights Section 51, the state's publicity rights, which allows redress if an individual's “name, portrait, picture, or voice is used ... for advertising purposes or for the purposes of trade without the written consent first obtained.”⁵⁰ In response, Lifetime argued, “The essential elements of the movie are true and accurate and based on court and police records, interviews with persons involved, and historical and other documents.”⁵¹ The network further pointed out that other versions of the story had appeared on CBS' *48 Hours Mystery* and the TruTV

series *Forensic Files*. Lifetime specified the case “involves a movie based on the public facts of a murder prosecution. While plaintiff may not want the story of his crime repeated in a television movie, the constitutional protection of speech and press on matters of public concern flatly prevent the issuance of an order enjoining the broadcast of the movie.”⁵² Attorneys for the Lifetime Network claimed the movie is a docudrama; while some scenes are fictionalized, the overall story is based on trial transcripts, interviews, and other information from this heavily publicized case.⁵³ Porco, who argued his case by phone from prison, alleged that the network “made up characters ... made up situations ... made no effort to interview anyone that I know ... didn’t contact me ... and made no effort to make sure [the film] is historically accurate.”⁵⁴ He claimed the film’s producers fictionalized some events, such as involving him in a sexual relationship with the daughter of the movie’s fictional lead detective. Lifetime responded that the material facts of the case and the trial—including the charges against Porco as well as details of both the investigation and trial—were all taken from trial transcripts; although some dialogue was invented, First Amendment protection still applies.⁵⁵ Lifetime used the publicity to its advantage, promoting the film as “the Lifetime Original movie Chris Porco doesn’t want you to see.” In April 2014, a New York Supreme Court ruled that “any alleged harm or injury flowing from the content of the film would be limited” and “that portions of the movie may be fictionalized, dramatized, or embellished does not constitute a sufficient basis for the imposition of a prior restraint enjoining its broadcast.”⁵⁶

Movie studios would, of course, prefer to get the official version of the story by having the accused or convicted individual sell his or her rights. This method has several advantages; most importantly, the story is obtained directly from the subject, and likely includes details and inside information that was never made public. Moreover, advertising the story as official or authorized by the subject may yield better publicity, resulting in greater movie ticket and book sales. Getting the story straight from the subject also helps to avoid any potential defamatory lawsuits that an “unofficial” version might produce.

There Is No Monopoly on Anyone’s Life Story

Purchasing the rights to someone’s life story **does not** give the purchaser an exclusive to write about that individual—something that is often misunderstood. The First Amendment permits anyone to write about newsworthy events or another person’s life story—with or without their permission—provided the information is truthful. This was recognized in *Rosemont Enterprises vs. Random House*⁵⁷ in which Howard Hughes, upon learning that Random House was going to write his unauthorized biography, wrote the biography himself and copyrighted his book to prevent Random House from releasing its book. Hughes then sued for copyright infringement and violation of his right of privacy under New York’s Civil Rights Laws. The court concluded that “a public figure (has) no right to suppress truthful accounts of his life,”⁵⁸ and “a public figure can have no exclusive rights to his own life story, and others need no consent or permission of the subject to write the biography of a celebrity.”⁵⁹

Additionally, the First Amendment prevents the individual

being profiled from receiving any compensation unless contracted to tell his or her story. In 1993, ABC, NBC, and CBS each broadcast its own version of Amy Fisher’s story, marking the first time any topic was made into a movie by all three networks.⁶⁰ NBC produced Fisher’s version, and CBS produced the Buttafuocos’ side of the story. Interestingly, ABC’s unofficial version, which incorporated multiple viewpoints, received the highest ratings of the three versions—18.2 million households. As no contract existed between ABC and Fisher or the Buttafuocos’, the network was not required to share its profits with either party.

Paying for the Rights Pays Off

Though it is not necessary to write the story, purchasing the rights to tell someone’s life story has several advantages. The contract between the author and the individual being profiled will state that the individual agrees to speak exclusively with the author, which establishes the work as the official or authorized story. The profiled individual also agrees to contact friends, family, former classmates, and coworkers to encourage them to speak with the author. The First Amendment gives people the right to speak or not speak; no one is obligated to cooperate with any author even if the story is deemed newsworthy. Most importantly, the exclusivity encourages “full and open disclosure” in which the profiled individual agrees to share information that may not be known to the public—yet.

What Options Does the Client Have?

The entertainment law scenario you are likely to face occurs when a client informs you he or she has been writing a book or screenplay as a hobby and that a producer is interested in optioning the story. An option is an exclusive agreement that gives the purchaser the right—not an obligation—to produce or begin production on the purchased story. It is contingent upon the fulfillment of certain conditions, which are agreed to by the producer and the writer.

Consider the following scenario: a film production company expresses interest in making your client’s book into a television movie of the week. The production company wants to increase the odds that the story will be produced according to its wishes—or even produced at all—and wants to reduce its financial risk. Instead of handing your client \$100,000 outright to buy the exclusive right to make the story into a movie, it will instead offer an option. The option gives the producer a period of time, usually one to two years, during which certain conditions in the agreement must be met. The conditions allow the production company time for activities including financing, booking certain actors or directors, and finding a studio or distributor that is interested in the story. If the conditions are met, the producer may opt to purchase the story. The option is advantageous to the writer because it provides time. If the producer chooses not to exercise the option within the agreed-upon time frame, it expires and your client is then free to shop around the story to another producer.

Although your client is thrilled at the idea that his or her story may be made into a movie and make money, there are several key points to keep in mind. First is the price of the option itself. Your client may be willing to accept any price and

any terms offered, fearing that failure to agree will discourage the production company from moving forward with the project. The price of the option is typically 10 percent of the underlying purchase price—but remember, everything is negotiable. It is **vital** to remember, when negotiating an option, to simultaneously agree on the price of the underlying purchase agreement. If you fail to do this, you have simply sold the right to negotiate at a later date. This works both to the advantage and disadvantage of the client, whether he or she is the writer or producer.

Back to our scenario: the producer buys the option, with no underlying purchase price included, for \$10,000 from your client (the writer) and has one year to raise the funds necessary to make the film. A few months later, the producer calls with great news—he or she now has the money lined up to make the film. During the negotiation to purchase the story, the producer mentions the names of the actors who have been cast to play the male and female leads. However, the writer is adamant that these actors are wrong for the roles and has a completely different vision of who should be cast. Since the underlying agreement did not specify whether or not the writer had the right to approve the talent cast, the producer and the writer are at an impasse. Here, the producer has given the writer \$10,000 and has received nothing in return but a chance to negotiate. Though the writer has been paid for the option, he or she has not yet achieved the dream of having the story seen on screen.

Conversely, if your client is the producer and no underlying price was established at the time of the option contract, he or she too has failed to achieve the objective of producing the story. In this scenario, a few months after your client (now the producer) purchases an option from the writer, the conditions under the option have been met and the producer wants to buy the script. The producer informs the writer that he or she has received interest from several studios and several A-list actors to star in the film. After receiving the news of how hot the script is, the writer states that he or she now wants millions of dollars or will go to another production company to sell the story. The producer assumed the script would cost about \$100,000 since based on the 10 percent (\$10,000) paid for the option. Since no underlying price was established, the producer has spent money only to buy a negotiation, and the writer is free to go elsewhere, after the term of the option has expired, along with the \$10,000 received.

Along with the underlying purchase price, there is another important factor to consider in your negotiation. When negotiating the option contract, you must decide whether the price of the option is applicable or non-applicable to the final purchase price. If applicable, the option price is credited toward the negotiated purchase price. In this case, it would be \$90,000 (\$100,000 less the option price paid of \$10,000). In the alternative, if the price of the option is non-applicable, the purchase price will be calculated on top of the option price.

It's Not Child's Play: Minors in Entertainment

In 1919, Charlie Chaplin discovered six-year-old Jackie Coogan, who went on to star in films such as *The Kid*, *Oliver Twist*, and *Tom Sawyer*.⁶¹ Coogan earned an estimated \$3 million to \$4 million⁶² in the 1920s (about \$40 million to \$54 million in 2014 dollars).⁶³ On his 21st birthday, Coogan discovered his

parents had squandered his earnings on furs, diamonds, and expensive cars—at the time, earnings of minors belonged solely to their parents. Coogan sued his parents but recovered only \$126,000.⁶⁴ As a result of the incident, several states passed the Coogan Law,⁶⁵ under which entertainment contracts require 15 percent of a child actor's earnings to be placed in a blocked trust account until the performer reaches age 18.⁶⁶ Moreover, the money is deemed to be the minor's, not the parents.

Several states also have child labor laws that establish the rules and regulations of performances by individuals under 18 years of age who render creative or artistic services in the state or are residents of the state. These laws address working conditions, ensure academic obligations are met, and ensure appropriate insurance coverage is in place before the child begins working.

Moreover, because child performers have the right to disaffirm a contract under the infancy law doctrine, some states, such as New York, have taken steps to protect them while ensuring that entertainment companies do not suffer—creatively or financially—if a child chooses to not fulfill his agreement. New York's Arts and Cultural Affairs Law §35.03 authorizes courts to approve or disapprove a child's entertainment contract—before the performance begins. Under these laws, the child appears before the judge, who reviews the contract's terms, explains the professional obligations, and determines that the child's decision to perform is made without duress. The judge will also explain the personal sacrifices the child will have to make because of his or her work obligations, which may include having less or no free time for personal activities or visits with friends. If the judge is satisfied with the terms of the contract and the child understands his or her commitment, the agreement will be confirmed—after which any action by the child that violates the contract is treated as a breach by an adult.

Making Your Client's Home a Star

One way in which your client may choose to become involved in the growing television and film industry—and be compensated—is to offer their home as a production location. There are several things attorneys need to consider when drawing up the contract with a production company. The first thing to check is whether the client's building or community allows participation in film projects; some bylaws do not allow production crews because of the potential disruption and inconvenience to fellow residents. Another factor is the amount of time involved; although the scene being filmed may only be on the screen for a few minutes, it may take several hours or even days to create. In addition, the type of scene and physical change the production will make to the home must also be considered. Is the movie a drama that will feature a family eating dinner in a dining room, or is it an action movie in which two people will be fighting and smashing into walls? There is a big difference between moving a couch and putting a hole in your wall, though (needless to say) the production company will repair it before they leave.

It is recommended that you contact the state or city film office to be sure the production company has the appropriate filming permits and insurance forms on file. The agreement

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Endnotes

¹See *Civil War Prisons* 26-27 (William B. Hesseltine ed., 1962).

²Richard Susskind predicts, "There will be five types of lawyer in the future," with the most elite being the expert trusted advisers: the purveyors of bespoke legal services retained by clients facing novel, complex, or high-value challenges. Richard Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* 271 (2008).

³See, e.g., Mark Powers and Shawn McNalis, *Time Management for Attorneys: A Lawyer's Guide to Decreasing Stress, Eliminating Interruptions & Getting Home on Time* (2008).

⁴See Dan Pinnington, *The Most Common Legal Malpractice Claims by Type of Alleged Error*, LAW PRACTICE Vol. 36 No. 4 (2010).

⁵See *Silivanich v. Celebrity Cruises, Inc.*, 333 F.3d 355, 367-68 (2d Cir. 2003).

⁶*United States v. Locke*, 471 U.S. 84, 94 (1985).

⁷*Id.* at 101.

⁸*Id.*

⁹*Toshiba Am. Info. Sys. v. New England Tech.*, No. SACV 05-00955-CJC, 2007 WL 8089815 at *1 (C.D. Cal. Nov. 14, 2007).

¹⁰*Halicki v. Louisiana Casino Cruises, Inc.*, 151 F.3d 465, 470 (5th Cir. 1998) (holding that lower court did not abuse its discretion in denying motion to extend time for filing notice of appeal).

¹¹*Pinion v. Dow Chem.*, 928 F.2d 1522 (11th Cir. 1991).

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¹³*Committee for Idaho's High Desert v. Yost*, 92 F.3d 814, 824 (9th Cir. 1996).

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should specify which parts of the home are accessible and what changes to the home can be made. It should also provide a few buffer days in case filming is delayed by conflicting production schedules or circumstances beyond human control, like weather.

If the scene involves extensive structural changes to the home, an escrow account can be helpful. The account will hold monies, paid by the production company, which are intended for use in returning the home to its prior condition. The client is thereby assured that he will receive the funds necessary to make repairs to his home.

The fee paid by the production company for use of an individual's home varies based on factors such as the number of days the home is used and the degree of changes required. The decision to use a particular home involves several visits from production company representatives, including location scouts, location supervisors, and even the director. Consultation with a certified public accountant is also advised, because, depending on certain factors, there may be various tax advantages for your client. The state or city film office can often provide real estate agents who specialize in listing homes for use as locations.

That's a Wrap

Entertainment opportunities are everywhere. Regardless of your specialty, you never know when or how they may make their way into your practice. The key is to recognize the potential for entertainment law to arise in any case or from

any client. Remind yourself—everything is negotiable, and you must get any agreement in writing. Now you are ready for that close-up. ACTION! ☺



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