

RESOLUTION 05-01-04

DIGEST

Talent Agency Licensing: Attorney Exemption

Amends Labor Code section 1700.4 to exempt licensed attorneys from the licensing requirements for persons within the definition of a talent agency.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Labor Code section 1700.4 to exempt licensed attorneys from the licensing requirements for persons within the definition of a talent agency. This resolution should be approved in principle because attorneys who represent artists in the entertainment industry are already regulated by the State Bar in their fiduciary relationships with clients.

The Talent Agencies Act ("The Act") was enacted to shield artists from unregulated and unscrupulous talent agents and managers. The focus is to protect the interest of the artist. The Act creates licensing requirements, rules and regulations for the agents to follow and provides for an administrative law process using the Labor Commissioner to resolve disputes. The procedures regulated under the Act are already part and parcel of the rules, procedures and ethical considerations attorneys are required to conform to as members of the State Bar of California.

Attorneys acting on behalf of artists enter into fee agreements, negotiate employment contracts, and conduct business deals. Their dealings with their clients are strictly regulated, particularly through the Rules of Professional Conduct. Therefore, attorneys should be exempt from having to obtain an additional license which is less stringent than the State Bar's requirements and discipline system.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Association recommends that legislation be sponsored to amend Labor Code section 1700.4 to read as follows:

- 1 §1700.4
- 2 “Talent agency” means a person or corporation who engages in the occupation of
- 3 procuring, offering, promising, or attempting to procure employment or engagements for
- 4 an artist or artists, except that the activities of procuring, offering, or promising to procure
- 5 recording contracts for an artist or artists shall not of itself subject a person or corporation
- 6 to regulation and licensing under this chapter. Talent agencies may, in addition counsel or
- 7 direct artists in the development of their professional careers. Licensed attorneys practicing

8 lawfully in the State of California are not a “Talent agency” and are exempt from the
9 licensing requirements of this Section.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Beverly Hills Bar Association

STATEMENT OF REASONS

Existing Law: Labor Code section 1700 et seq. (the “TAA”) provides for the licensing of “talent agencies” by the Labor Commissioner and forbids persons without such a license to carry on the occupation of a talent agency. Section 1700.4 defines a “talent agency” to include ALL persons engaging in the procurement, offering, promising or attempting to procure employment or engagements for artists (except for in connection with recording contracts) including licensed attorneys practicing lawfully in the State of California.

This Resolution: Would create an exception to section 1700.4 for licensed attorneys practicing lawfully in the State of California acting in the course and scope of the legal representation of an a client.

The Problem: In the normal conduct of their professional duties to a client in the entertainment industry, attorneys are requested and expected by their clients to engage in activities for which they are currently licensed by the State of California, but which potentially overlap within the legislative ambit of the TAA. These acts (including the negotiation of contracts, which is ordinary attorney conduct in this industry), could be construed as “procurement” under the TAA and therefore require the licensing of the attorney under the TAA, in addition to the State Bar. Artists in the entertainment industry oftentimes find it impossible to find a licensed agent or anyone else to represent them and an attorney is the only professional representation that the artist can get to engage in activities considered “procurement” hereunder. The TAA was intended to protect artists seeking employment in the entertainment industry from unscrupulous personal managers and did not refer to attorney behavior. Because the word “procurement” is so vague as to possibly even cover attorneys conduct in negotiating contracts, there is no ascertainable benchmark as to what role, if any, an attorney can perform in an artist’s career without TAA licensing. The conduct of attorneys is already well governed by the ethics codes—the Professional Rules of Conduct and the State Bar Act. These proscriptions govern attorneys to an extent even greater than the protections afforded artists by the TAA and the protections of the TAA would not add any additional protection for artists from unscrupulous attorneys than that provided by the State Bar rules and the Rules of Professional Conduct. If the TAA applies to attorneys providing “procurement” services to a client, then attorneys are effectively governed by two inconsistent bodies of legislation. The regulatory scheme for attorneys is more comprehensive and remedial than that in the TAA. Furthermore, scrupulous attorneys are at risk to have to disgorge their earnings derived from any such activities and to forego any future income interest in the artist’s earnings for which he was responsible as attorney solely because they do not have the additional license under the TAA. This has a chilling effect on attorneys and prevents artists from having well-qualified attorneys represent

them in entertainment industry matters. Artists are already well protected from unscrupulous attorneys via the licensing and oversight of the State Bar and to encourage attorneys to represent artists in need of their services for “procurement,” attorneys should be exempted from the additional license required by the TAA.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

AUTHOR AND/OR PERMANENT CONTACT: Kenneth D. Freundlich, Schleimer & Freundlich LLP, 9100 Wilshire Blvd., Ste. 700W, Beverly Hills, California 90212, voice 310-273-9807, fax 310-273-9809, e-mail Schleimerlaw@msn.com

RESPONSIBLE FLOOR DELEGATE: Kenneth D. Freundlich

COUNTERARGUMENTS

ORANGE COUNTY BAR ASSOCIATION

As employers, attorneys are subject to the wage & hour laws enforced by the California Labor Commissioner; as drivers they are expected to obey the traffic laws; as pedestrians having passed the State Bar does not give them license to jay walk.

Why - when they are performing the role of talent agents - should they be exempt from the laws regulating talent agencies? Why shouldn't they be licensed? Why shouldn't they post a bond as must everyone else acting in that capacity? This resolution fortifies the public conception that lawyers are unbearably arrogant. Though they make their living practicing law - their elite status should somehow exempt them from complying with it.

SAN DIEGO COUNTY BAR ASSOCIATION

The talent agency regulations require, among other things, (1) annual renewal of the license, at a cost of \$225, (2) submission to and approval by the state of all contract forms to be used by the talent agency, (3) filing of fee schedules with the state, (4) proper trust fund accounting, (5) maintenance of a bond, and (6) compliance with certain ethical rules.

It is true that due to ethical rules and licensing requirements for attorneys, their clients are already protected from fraud, which is one of the objectives of the talent agency rules. On the other hand, the talent agency rules protect against much more than actual fraud. As attorneys, we should have a substantial reason for asking for special treatment and exemption from rules applicable to others. No such substantial reason is apparent in this instance.