
To All Parents of Entertainment Kids

Entertainment Law 101: The Practical and Legal Differences Between “Talent Agents” and “Talent Managers” in California

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In order to help and to protect your children in the entertainment business, parents need to *truly* and *sincerely* understand the difference between talent managers and talent agents, a distinction that has confused even the most astute. Even agents and managers have difficulty agreeing, among themselves, on who does what, and whether both representatives are necessary to an actor. If your child is seriously interested in developing a career in the entertainment business—whether in television, feature films, commercials or live stage—you, as the parent or guardian, will need to appreciate fully the legal and practical, day-to-day differences between a talent agent and a talent manager.

Fortunately, the California Supreme Court, in the highly publicized case brought by Marathon Entertainment, Inc. against *Strong Medicine* star, Rosa Blasi,¹ articulately distinguished between agents and managers:

“In Hollywood, talent—the actors, directors, and writers, the Jimmy Stewarts, Frank Capras, and Billy Wilders who enrich our daily cultural lives—is represented by two groups of people: agents and managers. Agents procure roles; they put artists on the screen, on the stage, behind the camera; indeed, by law, only they may do so. Managers coordinate everything else; they counsel and advise, take care of business arrangements, and chart the course of an artist’s career.

This division largely exists only in theory. The reality is not nearly so neat. The line dividing the functions of agents, who must be licensed, and of managers, who need not be, is often blurred and sometimes crossed. Agents sometimes counsel and advise; managers sometimes procure work. Indeed, the occasional procurement of employment opportunities may be standard operating procedure for many managers and an understood goal when not-yet-established talents, lacking access to the few licensed agents in Hollywood, hire managers to promote their careers.”

More about Agents

Some say agents are the foot soldiers who every day slog through the muddy trenches of Hollywood. Agents are responsible for sending clients on auditions and generally representing opportunities that will, hopefully, lead to work on television, print ads, commercials, major motion pictures or live stage. An agent’s job is three-tiered. First, agents are responsible for keeping tabs of trends and developments in the business. Second, agents present actors to people who can make a deal. Third, if someone, a producer for example, wants to book a deal, it is up to the agent to negotiate the main points of the contract.

¹ *Marathon Entertainment Inc. v. Blasi*, (2008) 42 Cal.4th 974, 70 Cal.Rptr.3d 727.

Agents in a Nutshell:

- Under California law, talent agents, must be licensed and bonded by the State of California. In California, the license application process is complex and elaborate. It requires the submission of substantial personal information and, references, FBI fingerprinting and clearing a background check, the payment of annual fees and the securing of a \$50,000 renewal bond.
- All talent agents in California are regulated by Labor Code Sections 1700 through 1700.47, commonly known as *Talent Agencies Act of California* – the TAA.
- Many talent agents also operate under the “Screen Actors Guild” (SAG) franchise agreement, utilizing SAG contracts, while alternatively, others are members of the breakaway “Association of Talent Agents” (ATA).
- Talent agents earn a commission if their client is booked as a direct result of their submission, pitch, or meeting with a casting director or producer. That commission is up to a (10%) on work an actor books on union TV, Film and commercials, and up to 20% on print work. Although fees for non-union projects are unregulated, it is rare for commissions to exceed 20%.
- Talent agents typically ask an actor to sign a one-year contract, which often includes a ninety-one day performance-based “bailout” clause.
- Talent Agents have input on an actor’s headshots, but rarely have the time to work through hundreds of shots from your photography session.
- Good agents submit *and* pitch to get you in the door with casting directors.
- Talent agents, by definition, negotiate deals when an actor books the part, which includes trying to augment and improve most of the primary deal points.

Here is what our Supreme Court said about how talent agents are regulated:

“Agents are effectively subject to regulation by the various guilds that cover most of the talent available in the industry: most notably, the Screen Actors Guild [SAG], American Federation of Television and Radio Artists [AFTRA], Directors Guild of America [DGA], Writers Guild of America [WGA], and American Federation of Musicians [AFM]. Artists may informally agree to use only agents who have been “franchised” by

their respective guilds; in turn, as a condition of franchising, the guilds may require agents to agree to a code of conduct and restrictions on terms included in agent-talent contracts. Most significantly, those restrictions typically include a cap on the commission charged (generally 10 percent), a cap on contract duration, and a bar on producing one’s client’s work and obtaining a producer’s fee. These restrictions create incentives to establish a high volume clientele, offer more limited services, and focus on those lower risk artists with established track records who can more readily be marketed to talent buyers.”

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More about Managers

Managers, by contrast, are completely unregulated. They can choose to become members of private organizations like the *Talent Managers Association* (TMA) and the *National Conference of Personal Managers* (NCOPM) and abide by those organizations’ specific codes of ethics or conduct. However, even some of Hollywood’s top talent managers choose not to join these organizations, so membership is not a true guarantee of either credibility or ability. And, as recognized by our Supreme Court, talent managers offer a broad range of marketing-related services:

“Personal managers, in contrast, are not franchised by the guilds. They typically accept a higher risk clientele and offer a much broader range of services, focusing on advising and counseling each artist with an eye to making the artist as marketable and attractive to talent buyers as possible, as well as managing the artist’s personal and professional life in a way that allows the artist to focus on creative productivity. “Personal managers primarily advise, counsel, direct, and coordinate the development of the artist’s career. They advise in both business and personal matters, frequently lend money to young artists, and serve as spokespersons for the artists.” Given this greater degree of involvement and risk, managers typically have a smaller client base and charge higher commissions than agents (as they may, in the absence of guild price caps); managers may also produce their clients’ work and thus receive compensation in that fashion.”

A good talent manager can make a significant difference in the development, growth, and maintenance of an actor's career. Most legitimate, professional managers are people who nurture by nature. It is not only the new or young actors who benefit from this. Many seasoned actors have enjoyed the benefits of this career assistance throughout various stages of their working lives. The key words, however, are "legitimate" and "professional." Since talent managers, unlike talent agents, are not regulated, there is more room for the unscrupulous. There are a few telltale signs that will help you identify a legitimate manager in California:

- Legitimate managers will **never** sell you acting classes, workshops or coaching sessions, although they will likely recommend classes, coaches, and workshops and various options for you;
- Legitimate managers will **never** refer you to classes or workshops in which they have a financial interest;
- Legitimate managers will **never** sell you photography packages, although they will very likely recommend photographers who they believe will be best for you; and
- Legitimate managers will only offer you their professional guidance and services; you will pay them based on a percentage of what you actually earn.

Most managers care very much about the lives of their client actors and can often become deeply involved with them while helping them along their career journeys. Good talent managers will work closely with their clients. For this more intimate and intensive work, managers typically require longer term contracts and sometimes commission percentages that exceed ten percent. These days, it is not uncommon for top managers to also be producers, and thus create the very venues through which their clients acquire employment.

Managers in a Nutshell:

- Talent managers invest a great deal of time and energy into an actor's *potential*, long before the actor has a track record of booking consistently.
- Managers are largely unregulated, but can elect to be members of the TMA or NCOPM, both of which have specific codes of conduct for members;
- Some managers earn as much as fifteen percent (15%) commission on all work booked;

- Because their role in an actor's career is more personal than an agent's role, talent managers typically request a longer contract term – up to three years. Moreover, they often expect to work for actors for quite some time before seeing any return at all on their investment;
- Managers will advise actors on their image, resume format and content, headshots, acting classes, demo reels, websites, personal appearance and overall career direction;
- Talent managers make sure that actors are accurately listed on IMDb, Actors Access, LA Casting and that an actor's membership is current with SAG, AFTRA, and other collective guilds or unions;
- Managers determine an actor's most marketable type and the kinds of projects on which an actor is most likely to find work;
- Talent managers help an actor find an agency when the time is right—usually as soon as possible;

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Generally speaking, as close as the client-agent relationship is, the client-manager relationship should be even closer.

Talent Agencies Act “Procurement” Violations

One of the most significant practical differences between agents and managers relates to the issue of procurement. The Talent Agencies Act (TAA), which regulates talent agents, is a remedial statute, with the primary goal of protecting artists from exploitation. Because of its protective purpose, “the Act strictly regulates a talent agency's conduct.” See *Waisbren v. Peppercorn Productions, Inc.*, (1996) 41 Cal. App. 4th 246, 254.

Under the TAA, talent agents may “procure” work, but talent managers are forbidden from doing so. Unless the parties agree in writing to arbitration, the California Labor Commission has jurisdiction over disputes brought under the Act. The Commission has traditionally used a broad definition to determine when managers engage in unlawful procurement practices. Procurement has

involved more than soliciting contracts for the actor; it includes negotiating contracts, and “means either to secure employment or to bring about employment or cause employment to occur.” See *Arsenio Hall v. X Management, Inc.*, TAC No. 19-90 at p. 31. The Labor Commission has also ruled that a manager unlawfully procured employment by initiating or attending meetings with executives in order to advertise the artist’s talent and make them aware of the talent’s availability. Likewise, in a case involving actress Pamela Anderson, a manager was found to have violated the Act simply by having discussions with producers or casting directors in an attempt to obtain her auditions.

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As a result of the Commission’s broad definition of procurement, managers may be severely penalized for a wide range of procurement-related conduct. The traditional rule was that a single act of unlawful procurement automatically voided the manager’s contract. The contract was treated as if it never existed in the first place, and the manager could be required to reimburse money previously earned under the contract! See *Hall* at p. 37; *Smith v. Chuck Harris aka Oaky Miller*, TAC No. 53-05. Voiding the contract not only nullifies the manager’s right to receive commissions under the contract, it also gives actors the right, under Labor Code §1700.44(c) to disgorge, or seek reimbursement of commission earned during the year prior to the filing of the complaint against the manager.

In January 2008, the California Supreme Court, in the “Rosa Blasi” case, decided that “collateral” acts of unlawful procurement no longer automatically void the manager’s entire agreement. Instead, the Labor Commissioner or trial judge has the discretion to decide if the manager is entitled to some compensation even if incidental acts of unlawful procurement took place.

However, even under the new rule, managers may still be required to reimburse a year’s commissions or more if they infringe on the agent’s job of procuring work. Thus, one should continue to monitor how agents and managers handle auditions and engage in related procurement activities.

Do You Need an Agent and a Manager?

This is an important consideration. It also raises several questions. How old is your child? 7 or 17? Is she focused on one aspect of the business--commercials for example—or is she multi-faceted, and works in TV, film, commercials, modeling, dance, and hosting? Is she just starting out, or is she experienced, or perhaps already an established name? Since this is worthy of a more in-depth discussion, beyond the scope of this article, it will be addressed in a future article.

The Role of the Entertainment Lawyer

Even if you do have an agent and/or manager, when it comes time to close any meaningful deal, major motion picture, series regular role, etc., you’re going to need an experienced entertainment lawyer to go head-to-head with the studio, protect your interests, and finalize the deal. This is because those deals are negotiated with the lawyers who work for the studios’ legal affairs departments. This is particularly important in projects involving children since there are special laws that uniquely apply to any contract involving a minor, and parents also must be advised of any potential liability they may bear – all of which depends on the specific language of the contract. A talent manager can recommend an entertainment lawyer when it comes time to nail down a contract and protect both parent and child.

The Bottom Line for Parents

Both talent agents and talent manager can be very important to the success of a child’s career in entertainment. An important step to building a healthy and successful career for children and young adults is to understand the difference between the two.

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