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ENTERTAINMENT & SPORTS LAW SYMPOSIUM

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Ethics Across the Entertainment & Sports Practice Fields

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A. INTRODUCTION

Entertainment law is a highly competitive practice in which lawyers often assume non-traditional roles and responsibilities. Marketing, advertising, selling (shopping), packaging, networking and deal-making are common business activities for agents, managers and lawyers. As a result, lawyers sometime resemble agents and managers. However, lawyers are distinguished from others because lawyers are governed by codes of professional behavior.

Unlike agents and managers, lawyers must be highly educated and trained. They must pass a bar examination before being licensed to practice law. Their qualifications and character are scrutinized prior to entering law school and before taking the bar exam. After becoming licensed, most states require lawyers to continue legal education and training to maintain licensure.

Lawyers' achievements are often overshadowed by criticism of self-interest, greed and incompetency. As a result, grievances and malpractice claims are filed against entertainment lawyers.¹ A violation of the code threatens his or her reputation, license, and livelihood.

Lawyers' reputations depend on their ability to build and maintain professional relationships. However, along with public and professional scrutiny, references to entertainment (and all) lawyers such as "counselor," "advocate," "champion" and even "mouthpiece" reflect the critical valued and

3. See e.g., John P. Sahl, *The Public Hazard of Lawyer Self-Regulation: The Struggle to Reform Ohio's Disciplinary System*, 68 U. Cinc. L. Rev. 65 (1999) (noting examples of criticism of lawyers and recommending disciplinary reforms).

powerful roles that lawyers perform. Despite the jokes and jabs, the standard of living that many lawyers enjoy reflects the significant value that society attaches to quality legal services.

Entertainment attorneys who aggressively represent clients often test the limits of permissible professional conduct. Given the highly competitive and entrepreneurial nature of the entertainment business, it is not surprising that entertainment lawyers are the subject of complaints before disciplinary authorities and the courts. This article addresses the realities and concomitant ethics issues often encountered by entertainment lawyers.

B. PROFESSIONAL CONDUCT

Given increased complexity of the law, advanced technology, sophisticated and litigious clients, practicing law today involves significant risks.² One source predicts that recent law school graduates “will be the subject of three or more claims of legal malpractice before finishing a career.”³ Thus, lawyers should have professional liability insurance and understand how their insurance policies define the practice of law to insure that the policies cover their activities.⁴

Professional responsibility is one of the most rapidly changing fields in law. There have been changes to the ABA Model Rules of Professional Conduct (1983) (MRPC), a code of ethical conduct that has been adopted in some version by more than 45 states.⁵ States that follow a version of the older ABA Model Code of Professional Responsibility (1974) have revised portions of their codes that often track the MRPC. Courts adjudicating malpractice actions, and disciplinary authorities considering grievances, often use these codes to evaluate the propriety of lawyer conduct. Another change concerns the American Law Institute, which recently completed its new Restatement of the Law Governing Lawyers. The Restatement has identified important issues beyond the ABA’s ethical codes.⁶ In addition, in 1998 the ABA created the Ethics 2000

2. See Sahl, *supra* note 3, at 66 (noting that a decline in the high rate of grievances against lawyers is unlikely given these factors and an increase in public dissatisfaction with lawyers).

3. RON E. MALLIN & JEFFREY M. SMITH, LEGAL MALPRACTICE x (1989) (hereinafter Mallin).

4. A lawyer’s professional liability policy “is not written for ‘negligence,’ but for certain ‘acts, omissions or errors’ in rendering professional services.” *Id.* at vol 4, 299. Courts have liberally defined the phrase, professional legal services, for purposes of covering lawyers’ activities. If the client’s principal purpose for retaining the lawyer is the rendition of legal services, “then the rendition of non-legal services that are incidental to the task are included” in the insurance policy. *Id.* at 302-03. A lawyer retained for non-legal purposes, such as, investing a client’s funds or selling limited partnership interests for commissions, is not entitled to coverage. *Id.* at 304-05. Thus, depending on the context, a lawyer’s advice to a client about selecting a home in the “Hamptons” or selling a client’s songs to publishers or advertising companies, may not constitute the rendition of legal services.

5. JAMES E. MOLITERNO, CASES AND MATERIALS ON THE LAW GOVERNING LAWYERS 26 (2000). A significant amount of entertainment business occurs in California and New York, the locations of many entertainment companies and creative talent. Although California does not follow the MRPC format, it has promulgated rules and statutes many of which are similar to the MRPC. New York follows the format of the older ABA ethical code, the MCPR. Since the MRPC are widely adopted, this article focuses on the MRPC with references to the California Business and Professions Code (“CBPC”) and Rules of Professional Conduct of the State Bar of California (“RPCC”).

6. MORGAN & ROTUNDA, PROBLEMS AND MATERIAL ON PROFESSIONAL RESPONSIBILITY 13 (7th ed. 2000)(hereinafter MORGAN)(identifying malpractice and liens to secure payment for legal services as some of the subjects not covered in

Commission to consider changes to the MRPC. The Commission held numerous hearings throughout the nation and released its report at the end of 2000. The report recommended numerous changes to the MRPC.⁷

In 2002, the American Bar Association adopted substantial revisions to the MRPC. The name and format of the amended Rules are the same as in 1983. Very few states follow the MRPC as amended in 2002, but many have established committees to review the changes. This article refers to the amended Model Rules, unless stated otherwise.

Lawyers should conduct “professional responsibility audits” of their practices to insure that they are complying with state ethical codes concerning the practice of law.⁸ For example, some states have particular rules concerning direct mail solicitation and advertising, which lawyers will want to review for compliance purposes.⁹ Records of a lawyer’s audit of his or her practice may become useful evidence of the lawyer’s efforts to comply with ethical standards if the lawyer becomes the subject of a grievance or a malpractice complaint.

A. Establishing an Attorney-Client Relationship

Courts and disciplinary authorities have found that the attorney-client relationship exists as soon as the client reasonably relies on the attorney’s advice. As a result, attorneys should be careful about casually offering advice on legal matters. An attorney should formally establish a professional relationship with a client and memorialize it in writing.¹⁰ At the initial meeting with the client, the attorney should not give advice unless the attorney is prepared to accept responsibility for the consequences of the “client’s” reliance thereon.¹¹ Lawyers should be especially careful not to give advice at “beauty contest” interviews by parties seeking to hire lawyers, because they may be liable for incorrect advice and may also be precluded from representing the clients’ opponents for conflict of interest reasons.¹²

MRPC); ABA/BNA LAWYERS’ MANUAL ON PROFESSIONAL CONDUCT, 301:111 (1998) (reporting that some commentators believe the ALI’s Restatement (Third) of the Law of Lawyering might create yet another standard of care for judging lawyers’ conduct in malpractice actions).

7. See MORGAN, *supra* note 8, at 12 n.9.

8. There are legal consultants and companies, such as, the PLI, that will provide professional responsibility seminars to law firms and lawyers to promote compliance with states’ ethical rules for practicing law.

9. Some states require that solicitation letters be in envelopes with the phrase, “Advertisement Only,” in red ink and ten point type or more. See OCPR DR 2-101(F)(e). A few states require internet advertising to be pre-screened by bar committees. See Part 7 of the Texas Disciplinary Rules.

10. See MRPC, Rule 1.5 (b) (suggesting that with new clients that lawyers communicate in writing the basis of the fee); see also *Id.* at (c) (requiring written contingent fee agreements that are signed by the client).

11. Togstad, et al. v. Vesely, Otto, Miller & Keefe, 291 N.W.2d 686 (Minn. 1980); see Croce v. Kurnit *infra* note 32.

12. Bridge Products, Inc. v. Quantum Chemical Corporation, 1990 WL103200 (N.D. Ill.); DCA Food Industries, Inc. v. Tasty Foods, Inc., 626 F.Supp. 54 (W.D. Wis. 1985).

Ideally, the attorney should inform a prospective client at the initial meeting that he or she is not providing legal advice, and should reiterate this point in a follow-up letter thanking the person for his or her interest. This follow-up letter may also include the terms of a retention agreement that should have been discussed at the initial meeting. The retention agreement should clearly outline the scope and conditions of the lawyer's representation as well as the basis for the fee if the client decides to employ the attorney.¹³ A comprehensive and precise retention agreement defines the expectations of the attorney and the client, facilitates good client relations, and protects the attorney against claims of wrongdoing based on the client's unreasonable expectations. [See Retainer Agreements are attached as Forms I and II].

B. MRPC 1.1 - A Lawyer's Duty of Competence

Once an attorney agrees to represent a client, MRPC 1.1 requires the lawyer to provide competent representation.¹⁴ Competence requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. The Comment to MRPC 1.1 states that in determining the competency of a lawyer to handle a matter, "relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, and the preparation and study . . ." the lawyer can give to the matter.¹⁵ The comment also recognizes that it may be necessary to associate or consult with a more experienced lawyer or even refer the matter to another lawyer. As a result, consultations even among more experienced entertainment lawyers are common and highly advisable. Lawyers should be careful in making referrals or associating counsel because they might be liable for incompetent referrals or associations.

Some states provide for the involuntary deactivation of a practitioner's license in the event of mental incompetency or habitual use of drugs.¹⁶ Many bar associations have substance abuse committees that confidentially assist lawyers with substance abuse and mental health issues.

C. Conflicts of Interest - What's going on?¹⁷

13. MRPC, Rule 1.2 "Scope of Representation." For example, a lawyer may agree to negotiate the terms of a management contract for a client but not to handle his divorce. *Id.*; at 1.2(c) (permitting a lawyer to "limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent.").

14. As a matter of law, the attorney owes the client a fiduciary duty of care, diligence and loyalty. *See* Daniel J. Pope & Suzanne Lee, *Breach of Fiduciary Duties and Punitive Damages*, 66 Def. Couns. J. 257 (1999).

15. *See* MRPC, Rule 1.1, Comment 1. Otherwise, no attorney would be competent to accept a first case. *See* CBPC §6092, RPCC, Rule 3-110.

16. *See* CBPC §6190.

17. The late, great Marvin Gaye, 1971, Tamala Records.

1. Conflicts of interest in the entertainment industry have increasingly attracted significant attention. The public and the profession seem to have insatiable appetites for following lawsuits filed by famous artists against their famous lawyers.¹⁸

The unconventional culture of the entertainment business is conducive to conflicts of interest and other lawyer misconduct. The business is fast-paced, highly competitive, and intense. It is commonly described as “incestuous” with a premium attached to “who you know” as much as “what you know.” The entertainment business also tends to be dominated (at least at the corporate top) by a small number of resilient power-brokers.¹⁹ It is not unusual for these individuals to be fired or to resign from their positions only to resurface in a similarly powerful position at another company. Informed entertainment lawyers follow the trade journals and other media to track the frequent movement of business people within the industry as such changes often create conflicts of interest and other potential ethical problems.

Some observers feel that conflicts of interest may be beneficial to parties. For example, a prominent entertainment attorney who represents a successful producer and a famous actor may unite them (as some agents do) in a “package” deal to secure box-office success. Although the package deal brings together clients with possibly differing interests, the combination ultimately makes the producer, actor, lawyer, and studio more successful. Everyone wins. For a less famous talent, the package is very valuable because it could launch their career. There is always the risk however, that attorneys may protect their special relationships with the studio and others in package deals by promoting more prominent clients at the expense of less famous clients.²⁰

2. *MRPC 1.7 sets forth the general rule governing conflicts of interest:*

a. *Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:*

(1) *the representation of one client will be directly adverse to another client; or*

(2) *there is a significant risk that the representation of one or*

18. One observer has stated the following about the recent interest in conflicts cases: “[s]ue the lawyers when not paying them does not work.” The increase in conflict of interest cases and related lawsuits have been, in part, on non-entertainment lawyers who do not understand the business culture. McPherson, *Conflicts in the Entertainment Industry? . . . Not!*, 10, NO.4 ENT. & SPORTS L. J. 5. (Winter 1993) (hereinafter McPherson).

19. In a TIME magazine article, super-agent Michael Ovitz was quoted, “[l]ook this industry created conflicts of interest.” TIME, *The Ultimate Mogul*, p. 54, April 19, 1993.

20. McPherson, *supra* note 20.

more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

b. Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

D. Simultaneous Representation. Under MRPC 1.7(a), an attorney's simultaneous representation of a music manager who is a prior client and an artist in negotiating their artist-management contract raises serious conflicts of interest issues. Some commentators contend that attorneys should decline joint representation in this context because of the inherent conflict in the positions of the parties.²¹ The parties' interests with respect to certain contract provisions, such as the duration of the contract, may be directly adverse. Even if the parties' interests are not directly adverse, a concurrent conflict of interest may exist if there is a significant risk that the attorney's responsibilities to the earlier client, the manager, may materially limit the attorney's representation of the artist and violate 1.7(a). The manager's attorney should ask the artist to retain independent counsel to facilitate the negotiation of the contract, to help ensure the enforcement of an eventual agreement, and to avoid personal liability for violating the conflict of interest rules. Another, perhaps less prudent, option is for the manager's attorney to obtain written informed consent from both clients of any conflicts of interest.²² It is important to note that some conflicts are nonconsentable.²³ Comment 14 to MRPC 1.7 describes a nonconsentable conflict as one in which,

21. *E.g.* Jack P. Sahl, *Ethics for Entertainment Lawyers: Avoiding Conflicts of Interest*, 12TH ANNUAL INTERNATIONAL FOLK ALLIANCE CONFERENCE. (Cleveland Rock & Roll Hall of Fame, 2/11/2000) (suggesting that lawyers should generally avoid dual representation of managers and artists in negotiating the terms of a personal management contract).

22. Author John Grisham sued his attorney for breach of fiduciary duty and malpractice, in part, for not advising him of the conflicts of interest in the attorney's simultaneous representation of both Grisham and his agent. Grisham claimed he retained the lawyer on the advice of his agent and that the attorney failed to inform Grisham that he did not have to renew his original agreement with the agent. *See* Richard E. Flamm & Joseph B. Anderson, *Conflict of Interest in Entertainment Law Practice, Revisited*, 14 ENT. & SPORTS L. J. 3 (1996) (discussing Grisham v. Garon-Brooke Assocs., Inc., Action No. 3:96 CV045-B (N.D. Miss. 1996) (hereinafter Flamm)).

23. MRPC, Rule 1.7, Comment 14. Billy Joel sued his former New York lawyers claiming \$90 million in damages. Joel charged attorney Grubman with conflict of interest, alleging that Mr. Grubman represented the singer while also representing his manager, top executives of his recording label, CBS Records (now Sony Music), and the merchandising company which holds the franchise for t-shirts and other items. Grubman's firm alleged that any conflicts were fully

“the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client’s consent.”²⁴

1. *The Comments to MRPC 1.7 - A Better Understanding of Conflicts of Interest:*

The conflict of interest rules are designed to protect and advance two important values - confidentiality and undivided loyalty - in the attorney-client relationship.²⁵ These two values overlap and are at the core of the lawyer’s fiduciary duty to clients. Both values are disregarded by a lawyer who harms a client by sharing the client’s confidences with the client’s adversary - reflecting obvious disloyalty. The Comments to MRPC 1.7 provide additional insight concerning the lawyer’s ethical duty of loyalty to the client.

The Comment to MRPC 1.7(a) indicates that an attorney is generally prohibited from representing a client when that representation involves a concurrent conflict of interest. “Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated.”²⁶ Another less

disclosed. Joel's conflict of interest claims also include an allegation that Grubman paid kick-backs to Billy Joel's manager in order to retain Joel as a client. Joel also claimed breach of contract, fraud, breach of fiduciary duty, and legal malpractice against his former attorney. Grubman was hired by Billy Joel's manager (and former brother-in-law) to represent Joel in negotiations with CBS Records. In a separate action, Joel also sued his former manager. The matters were settled for an undisclosed amount. Joel v. Grubman, 1992, Case No. 261-55-92 N.Y. Sup. Ct.

24. A television producer sued his former law firm alleging that the firm secretly represented other clients whose interests conflicted with his. Producer Phillip DeGuere, Jr. claimed that CBS contracted with him as writer and executive producer on "The Twilight Zone" series. CBS canceled the series after taping only nine of the 22 episodes it had ordered. DeGuere claimed that, under the contract, the network owed him \$900,000 but that upon counseling with his law firm, he agreed to accept \$250,000 in cash and a commitment for a different 13-week series in a subsequent season. DeGuere claimed he did not know that at the same time the law firm was representing him against CBS, the firm was also representing Columbia Pictures against CBS in a deal for the purchase of the daytime drama, "The Young and The Restless". DeGuere's suit claimed that, because CBS paid a premium price for the soap opera, it was forced to cut development of new shows, including a new television project produced by DeGuere, hence limiting CBS' ability to perform under the terms of his settlement agreement with him. DeGuere's attorney stated that the law firm should not be representing studios when they are also representing talent who must negotiate deals with those studios. Persistence of Vision, Inc. v. Ziffren, Brittenham & Branca, 1992, L.S. Sup. Ct. Case No. BC021603. Jimi Hendrix' father sued his long-time attorney and the foreign investment companies that purportedly granted rights to the late guitarist's favorable masters and copyrights. Hendrix alleged that Leo Branton, Jr. concealed the true nature of various agreements regarding Jimi Hendrix' recordings and copyrights and often acted in direct conflict of interest. Hendrix v. Branton, April 16, 1993, U.S. Dis. Ct. Wash.

25. See MRPC, Rule 1.6 (requiring lawyers to protect client confidences and listing exceptions to the general rule).

26. *Id.* At Rule 1.7, Comment [6]; see Cinema 5, Limited v. Cinerama, Inc., 528 F.2d 1384 (2d. Cir. 1976) (establishes the general standard in federal courts that a lawyer cannot sue an actively represented client of another firm in which the attorney is a partner). *But see* Universal City Studios v. Reimerdes, 98 F. Supp. 2d 449 (S.D.N.Y. 2000). In Reimerdes, Time Warner sought the disqualification of a lawyer who represented a defendant in a suit by the movie studios against the defendant who posted a computer program over the Internet that defeats the encryption system for DVD's. *Id.* 450-

obvious example involves several parties forming a partnership. The safest practice is for each partner to secure separate counsel in negotiating or reviewing the partnership agreement. Alternatively, MRPC 1.7 expressly provides that after full disclosure of the potential conflicts of interest, the parties can waive such conflicts of interest by giving their informed consent, confirmed in writing, to multiple representation. Of course, if a direct conflict of interest does arise between the parties during the negotiation of the partnership agreement, or litigation erupts among the parties, the Comment to MRPC 1.7 suggests that unless the lawyer has obtained the informed consent of the client under the conditions of 1.7(b), the attorney ordinarily must withdraw in order to safeguard the confidentiality of the parties pursuant to MRPC 1.6. It is important to note that the representation of multiple parties is not uncommon and not always impermissible in the entertainment business. For example, it may be permissible for a lawyer to negotiate a recording contract for a manager and the members of a group with a third party record label.

The Comment to MRPC 1.7(a) explains that loyalty to the client is also compromised “when there is significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer”²⁷ In such a case, the lawyer is unable to recommend or carry out an appropriate course of action for the client. For example, a lawyer representing a personal manager in an artist management contract cannot ethically acquiesce to a shorter duration of the contract because the artist’s father, a builder, has promised to give the lawyer a good rate on remodeling his home.

Subdivision (b) of MRPC 1.7 permits a lawyer to represent a client notwithstanding the existence of a concurrent conflict of interest if (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing. It is often very difficult to anticipate, and thus to inform the individuals in the group about, all of the

51. The same lawyer represented Time Warner and other defendants in an unrelated suit involving the rights to the term, “Muggles,” from the Harry Potter books. *Id.* The federal judge in the Southern District of New York denied Time Warner Entertainment’s disqualification motion because Time Warner had improperly delayed the filing of its motion to unfairly prejudice the defendant. *Id.* at 455. In addition, there was no evidence that the defendant’s lawyer was privy to any of Time Warner’s secrets because of the lawyer’s work for Time Warner involving the “Muggles” case. *Id.* See also Stan Soocher, *Bit Parts* 16 Enter. Law & Fin. 8 (May 2000) (briefly discussing Reimerdes).

27. MRPC, Rule 1.7(a)(2).

possible future conflicts of interest that may arise among them.²⁸ When a lawyer is in doubt about undertaking or continuing representation because of a conflict of interest concern, he or she should consult with other lawyers, preferably experts in professional responsibility. If the lawyer is still concerned about the representation, he or she should decline representation until the new client responsible for the conflict of interest obtains independent counsel.

The Comments to MRPC 1.7 acknowledge that conflicts of interest in contexts other than litigation may be difficult to assess. "Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise, and the likely prejudice to the client from the conflict. The question is often one of proximity and degree."²⁹ Thus, the evaluation of lawyer conduct in the entertainment industry will involve to some degree the custom and nuances involved in the business as well as the MRPC and its Comments. For example, if the lawyer represents a corporation which may "loan-out" the services of the artist or manager shareholder, the Comments warn of the potential for conflict if the lawyer also serves on the corporation's board of directors.

2. *Reviewing Other Noteworthy Conflicts of Interest Issues:*

a. Business transactions. On its face, MRPC 1.8 appears to state clearly that a lawyer shall not enter a business transaction with a client unless (1) the transaction is fair and reasonable to the client, (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction, and (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.³⁰

28. See Flamm *supra* note 24 at n.16 citing , Adler v. Manatt, Phelps, Phillips & Kantor, L.A. Supr. Ct. BC O5307 (Apr. 1992) and noting that the former drummer of Guns'n Roses sued a law firm for malpractice and other causes for damages resulting from his signing an agreement with other members of the band)

29. MRPC, Rule 1.7, Comment [26].

30. The widow of the late popular songwriter and singer, Jim Croce, sued in New York Federal Court claiming unconscionability and breach of fiduciary duty against Croce's publishers, managers and an attorney on managerial and personal services contracts. At the initial meeting, an attorney was introduced to the Croces as "the lawyer" and reviewed the contract terms. The Croces were aware that the attorney had a business relationship with the publishers and managers on the transaction. Although the attorney was clearly not the Croces' lawyer and the Court upheld the contracts, the Court found the attorney liable for all of Croce's legal fees in challenging the contracts. The Court held that the attorney had breached a fiduciary duty to the Croces by failing to advise them to seek independent counsel. The lesson of the Croce case is that a lawyer who stands to profit from a business enterprise may find himself in a fiduciary relationship with a non-client by failing to advise independent counsel at the outset. The case has also inspired the inclusion of an acknowledgment in management contracts that the artist has been advised of the opportunity to seek

Does entering into a shopping agreement for a contingent fee from income derived from a record contract, the sale of a book, or some similar deal constitute entering a business transaction? The attorney should disclaim in the shopping agreement that the parties are entering into a joint business venture, to help ensure that the lawyer does not violate the ethical rules concerning a business transaction with a client.³¹ [*See* Form III ¶8(d), which is a "Shopping Agreement"]

b. Payment for attorney fees by another. MRPC 1.8(f) permits someone other than the client to pay the lawyer for his services if the client gives informed consent and there is no interference with the lawyer's independent professional judgment and relationship with client, including the need to protect client confidences. For example, a manager could pay a lawyer to represent an artist in divorce proceedings. It is even possible, although not especially advisable, that a manager could pay a lawyer to represent an artist and negotiate a personal management agreement with the manager's lawyer. If the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with MRPC 1.7.32 (1.8 comment 12 says this).

c. Attorney interest in literary rights. MRPC 1.8(d) precludes a lawyer from making or negotiating an agreement with the client prior to the conclusion of the representation which gives the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation. In the context of on-going litigation, the conclusion of representation occurs when there is a non-appealable final judgment. It is important to note that the rule does not prohibit a lawyer representing a client in a transaction concerning literary property from accepting as his fee an ownership interest in the property.³³

d. Conflicts in representing former clients. Like practicing in small communities, the "incestuous" entertainment industry gives rise to potential conflicts of interest with respect to representing a party against a former client. MRPC Rule 1.9 and its Comments state that a conflict of interest arises with a former client when the lawyer's representation of a new client bears a "substantial relationship" to the matter of the representation that the attorney provided to a former client.³⁴ Disqualification of a lawyer from the

independent counsel. Croce v. Kurnit, 565 F.Supp. 884 (S.D.N.Y. 1982), *aff'd.*, 737 F.2d 229 (2nd Cir. 1984).

31. *See* RPCC, Rule 3-300.

34. MRPC, Rule 1.8, Comment 12.

33. MRPC, Rule 1.8, Comment [9].

34. The "substantial relationship" test was developed in T.C. Theater Corp. v. Warner Brothers Pictures, 113 F.Supp.265 (S.D.N.Y.1953) (holding that if the matters or cause of action of the new representation are substantially related to the former representation, "the Court will assume that during the course of the former representation confidences were

subsequent representation is for the protection of the former client. The lawyer should either withdraw from representation or seek the former client's informed consent regarding the conflict of interest, realizing that in some cases a waiver will be difficult because of the risk that the lawyer will harm the former client by using the former client's confidences. The former client's informed consent must be confirmed in writing.³⁵ In this type of conflict of interest situation, the lawyer is advised to have as full and frank a discussion as possible with parties, keeping in mind the need to preserve each client's secrets and confidences. [Conflicts of Interest Waiver is attached as Form IV].

C. AGENTS, MANAGERS AND LAWYERS

The practice of entertainment law is quite broad. It includes litigators, estate planners, tax professionals, in-house counsel, and deal makers - entrepreneurial attorneys who facilitate business deals. The functions of agents, managers, and entrepreneurial entertainment lawyers often overlap. These functions are not easily distinguishable. Personal managers are given powers-of-attorney and function much like a lawyer. They counsel their artists on business and career matters and enter into contracts on their behalf. Agents, who must be licensed in most states, endeavor to procure employment for the artist. The licensing requirement and the narrow definition of their job induces some agents to broaden their involvement and income by becoming agent or managers. Lawyers are often positioned to assume all these roles, as representative, counselor and attorney-in-fact.³⁶

A. Textbook Definitions of Roles³⁷

Agents procure employment for artists in the entertainment fields. At common law, "agents" are persons authorized by a principal to act on behalf of that principal under the

disclosed to the attorney bearing on the subject matter of the [new] representation" *Id. at 268-69*). See MRPC, Rule 1.9, Comment [3].

35. MRPC, Rule 1.9(a) & (b)(2). An action was filed by Steve Fagnoli, a former manager for the musician, Prince, alleging a conflict of interest stemming from the Ziffren firm's formerly representing Fagnoli from 1981 to 1986, then later representing Prince during a time when Fagnoli sued the musician and his corporations. The suit alleged that the Ziffren firm disclosed to Prince some of Fagnoli's confidential communications protected under the attorney/client privilege. The Ziffren firm had helped Prince and Fagnoli settle a dispute during their representation of Prince and at the invitation of Fagnoli. In granting the law firm summary judgment, the Court noted that the parties had entered into a release including conflict of interest claims after the parties settled their dispute. Fagnoli v. Ziffren, Brittenham & Branca, 1992, Case No. BC068280 L.A. Sup. Ct.

36. Lawyers may have to obtain licenses if they procure employment. There are a number of articles providing guidance for the attorney who wishes to become an agent, manager, or both. See, e.g., RAYMOND L. WISE, LEGAL ETHICS 185 (2d ed. 1970); James O'Brien III, *Regulation of Attorneys Under California's Talent Agencies Act: A Tautological Approach to Protecting Artists*, 80 CALIF. L. REV. 471 (1992); Bruce S. Stuart, *Swifties, Shifties, and That E-Biz Jazz: The Ethical Roles of Attorney/Literary Agents*, HASTINGS COMM/ENT.L.J. 245 (Winter, 1996).

37. DONALD E. BIEDERMAN, ET AL., LAW AND BUSINESS OF THE ENTERTAINMENT INDUSTRIES (3d ed. 1996).

principal's control.³⁸ A music agent's work, unlike an agent in the film or book publishing industries, is generally limited to soliciting and procuring engagements for live performances, personal appearances and, perhaps, endorsements. Agents for musical talent are also subject to the strictures of the American Federation of Musicians ("AF of M"), an international trade union. The AF of M requires that agents confine their efforts to procuring employment, and require that they be licensed by the AF of M. Unlicensed agents are forbidden from doing business with the AF of M, and severe penalties are incurred for musicians doing business with unlicensed agents. Almost as important to this discussion is the AF of M's limits on the fees agents or personal managers can receive. Agents are allowed a *maximum* of fifteen percent of an artist's gross receipts. A personal manager, defined by the AF of M as having only to do with the development of the artist's career in giving advice and guidance, can only receive *five* percent over the agent's percentage of the artist's gross receipts. Related exploitations by agents may include merchandising deals at performances or arranging for films of live performances.

Personal Managers are the artist's principal career advisors in all business affairs, including daily management to strategic career development planning. Personal managers often oversee the hiring of other managers to deal with other aspects of the artist's career. Personal managers often hire the business manager. Business managers, usually accountants, manage business and personal finances. While the business manager manages the money, the personal manager focuses his/her efforts on how the money is earned. This focus often leads a personal manager to delve into the agent's realm of procuring employment. A personal manager involved in procuring employment may be subject to sanctions as an unlicensed agent.³⁹

Lawyers are engaged to protect the legal interests of their clients. The rules of professional conduct may be the attorney's chief impediment stumbling to becoming establishing him or herself as an agent or manager. The MRPC govern conflicts of interest and the duty of loyalty. Both may be compromised when an attorney assumes the roles of counselor and agent/manager.⁴⁰

B. Practical Roles⁴¹

38. W. EDWARD SELL, AGENCY, (1975). THE RESTATEMENT (SECOND) OF AGENCY §424, subd. 1 (1958) defines agency in any enterprise as a *fiduciary* relationship created from the client (principle)'s consent that the agent may act on the client's behalf and subject to the client's control. This means that, besides being liable for breaches of statutorily-imposed duties, an agent is liable for the common law breach of the fiduciary duties of good faith, fair dealing, and loyalty.

39. See, e.g., Chinn v. Tobin, California Labor Comm'r Case No. 17-96 (1997); Waisbren v. Peppercorn Productions, Inc., 48 Cal. Rptr. 2d 437 (1996); Mandel v. Liebman, 303 N.Y. 88 (1951); Raden v. Laurie, 262 P. 2d 61 (Cal. 1953). See also Don Biederman, *Agent or Manager? There is a Difference . . . Isn't There?*, 15 No.9 ENT L. REP. 3 (Feb., 1994); Fred Jelin, *The Personal Manager Controversy: Carving the Turf*, 7 No.1 ENT. L. REP. 3 (June, 1985) (hereinafter Jelin).

40. See also Joseph B. Anderson and Darrell D. Miller, *Professional Responsibility 101*, 11 ENT. & SPORTS LAW 8 (Summer 1993) (discussing an earlier article on legal ethics as applied to agent/managers, see McPherson, *supra* note 20).

41. Harold Orenstein & David Guinn, ENTERTAINMENT LAW & BUSINESS: A GUIDE TO THE LAW AND BUSINESS

Practically speaking, the roles of agent, manager and lawyer are not easily distinguishable. Conflicts arise when the parties switch or merge roles. For example, the lawyer who also acts as a personal manager must proceed carefully given the potential for conflicts of interest and the possibility that the lawyer-client relationship will be adversely affected by the artist's frustrations with unrealized career expectations.⁴²

Much like a lawyer or a personal manager, agents create or reject employment opportunities and influence an artist's career and image. Agents negotiate deals, or "package" deals, by using business and personal relationships to bring artists together with other creative talent for tours, sponsorships, recordings and other business. Agents are responsible for the collection, accounting, and distribution of money, just like a business manager. Agents are paid by commissioning the artist's gross income from employment procured by the agent usually at 10% to 15% rate.

Personal managers may procure employment like an agent. The music industry is a particularly appropriate setting for considering lawyers who also act like personal managers or agents because the role of a personal manager developed out of a need for business assistance by artists in the music industry.⁴³ In addition, musicians need contracts and information which are often provided by the personal manager. Managers negotiate recording contracts while agents book the artist's performances or services.⁴⁴ Finally, managers nurture the artist's career and often become a producer of the artist's talents. Managers have usually represented a coterie of talent and may use one or more of his clients to produce an event or to assist him in developing a particular artist's career.

Unlike agents, personal managers are not required to register with state administrative agencies. Unlike lawyers, there is no legally enforced code of professional conduct or licensing process for managers. Yet, managers do not operate wholly without restraints. In California, a manager who procures employment must be licensed as a "talent agency." The Labor Commission of California has jurisdiction over manager-artist contracts, subject to California Supreme Court review.⁴⁵ Finding work for artists in New

PRACTICES OF THE ENTERTAINMENT INDUSTRY (1996).

42. Who must and who need not be licensed often turns on whether the person in question is providing the services of an agent or of a manager, or both. For example, booking agents in New York are required to be licensed as employment agencies under N.Y.S. §171 (1997). However, personal managers need not have a license. *See also* Friedkin v. Harry Walker, Inc., 395 N.Y.S. 2d 611 (1977) (holding that agents who did not manage their clients' careers but only secured employment for them were required to be licensed as employment agencies under §171, as procuring employment for their client was not merely incidental to their job); Gervis v. Knapp, 43 N.Y.S. 2d 849 (1943) (finding that infant singer's guardian could not disaffirm a contract as unenforceable which was entered into on infant's behalf by a personal manager who was not licensed because licensing was not required of a manager who was "primarily a manager").

43. *See* Jelin, *supra* note 41.

44. *Id.*

45. *Id.* at 4.

Jersey requires a manager to be licensed as a "booking agency."⁴⁶ Unlike agents, managers may have powers of attorney to bind their artist to deals managers negotiate on their artist's behalf. Managers, therefore, commission a large percentage of the gross income of the artist earned in the entertainment fields, usually 15% to 25%.⁴⁷

Lawyers may package deals through relationships, shop talent and creative material, advise on money matters, recommend individuals or businesses for assistance, protect the client's financial interests, and intentionally or inadvertently exercise a greater degree of control over the client than is customary in other law practices. Lawyers may bill hourly or a contingency fee if work is done on a speculative basis (such as shopping and negotiating a record deal), or a combination of both. (Refer to section IV of this outline). Certain entertainment lawyers fit the textbook and practical definition of both agents and managers. This is not weird or wrong. It is a fact. Lawyers who wish to perform these services must do so within the applicable guidelines and restrictions governing all lawyers.

C. Licensing Regulations and Rules

Many states require agents - persons providing employment opportunities - to be licensed. California and New York have the most comprehensive laws regarding the licensing and regulation of entertainment agencies.⁴⁸ In order to be licensed, agents must demonstrate, in part, their good character and competency in the business of providing work. Among other requirements, agents may also have to show proof of the nature and location of the agent's business. The statutes also address agency agreement forms, fees, disposition of grievances and penalties. Penalties for violating the statutes are court-enforced with criminal misdemeanor and/or civil penalties, which include voiding contracts and ordering the return of commissions. Cases establish that persons operating in violation of the statutes in New York and California⁴⁹ are nevertheless exposed to statutory penalties whether they are licensed by the state or not. These cases demonstrate how talent can assert non-compliance with the applicable licensing statute and void management contracts *ab initio*. Remedies available to the talent include recovering all commissions paid to managers proven to have in effect operated as unlicensed agents. State labor commissions (established for the protection of employees) issue licenses and enforce the statutes.

Managers who do not assume agency functions do not require licensing in California

46. N.J.S. §34:8-43 (1997). This statute also governs agents.

47. This commission is subject to the guidelines established by the American Federation of Musicians ("AF of M"), an international trade union. The AF of M sets a ceiling of fifteen percent (of an artist's gross receipts) for agents working with members of the union. Personal managers are limited to five percent of the gross, over and above the agent's percentage. BY-LAWS OF THE AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA, ART. 23, §2 (revised Sept. 15, 1987).

48. California Labor Code §§1700 et seq; New York General Business Law §§170 et seq.

⁴⁹49. Waisbren v. Peppercorn Productions, Inc., et al., 48 Cal. Rptr.2d 437 (1996); Pine V. Laine, 321 N.Y.S. 2d 303 (1st Dept. 1971); Buchwald v. Superior Court of San Francisco, 62 Cal. Rptr. 364 (Ct.App. 1st Dist. 1967); Anita Baker v. BNB Associates, Ltd., Case No. TAC 12-96, California Labor Commission, determination date 12-27-96.

or New York.⁵⁰ However, managers must be careful to structure their employment procuring activities so that they will comply with these and other requirements that such activities are permissible if they are "merely incidental" to their actions as manager. It is advisable to include language in a management contract to the effect that the artist acknowledges that the personal manager is not an employment agency or theatrical agent and that the personal management duties do not include securing or soliciting employment for the artist. Formally recognizing the cross-over function of agents and managers, the California statute exempts from its definition of "talent agency" (and, therefore, exempts from licensing) managers who procure, offer or promise to procure recording contracts for music artist. California further allows an unlicensed person to act in conjunction with and at the request of a licensed talent agency in the negotiation of an employment (recording) contract (emphasis supplied). The New York statute specifically exempts from its definition of "theatrical employment agency" (and, therefore, exempts from licensing) the business of managing where such business only "incidentally" involves seeking employment. The California statute also specifically empowers talent agencies to "counsel or direct artists in the development of their professional careers." Therefore, California agents may manage while managers (with narrow exceptions) cannot function as agents without complying with the licensing requirements. By not enacting statutes specifically addressing the entertainment agencies, some states have left the regulation of agents and managers to general employment statutes and common law. Common law imposes fiduciary duties of loyalty, good faith, and fair and honest dealing on all agents and managers and lawyers.⁵¹

Lawyers are licensed by the state judiciary, which is also responsible for promulgation and enforcement of the applicable rules of professional conduct and for deciding legal malpractice cases. As previously noted, most state rules emulate the provisions contained in the American Bar Association Model Rules of Professional Conduct (Model Rules) which are the reference standard in this discussion.

D. Music Lawyer as Manager or Agent

Lawyers can serve as agents or managers while simultaneously practicing law. In the music industry, lawyers procure recording contracts for their clients and help manage their career by participating in career strategy and deal making. Unlike agents, lawyers usually do not regularly book personal appearances for their clients. Thus, lawyers often tend to act more like managers than agents. Personal management requires daily and detailed attention to the personal affairs and logistics of an artist. Because an experienced music lawyer may know the business better than an inexperienced manager, the attorney who has a proactive relationship with the artist and manager may find himself or herself making recommendations, facilitating relationships, creating opportunities, and advising the manager as well as the artist. By doing so, the lawyer becomes, in effect, part of the management

50. Mandel v. Liebman, 303 N.Y. 88 (1951); Raden v. Laurie, 262 P.2d 61 (Cal. 1953).

51. Detroit Lions, Inc. v. Argovitz, 580 F.Supp. 542 (E.D. Mich. 1984). A non-lawyer sports agent violated conflicts of interest standards when negotiating on behalf of a player with a team in which the agent was also part owner; Croce v. Kurnit, 565 F.Supp. 884 (S.D.N.Y. 1982), *aff'd* 737 F.2d 229 (2d Cir. 1984).

team. In some cases, the attorney may be invited by both artist and management to take on duties which are generally the prerogative of artist management. This usually means representation on a contingent fee basis and greater involvement with the artist's daily affairs in addition to providing general legal counsel. By limiting the work a lawyer can dedicate to other legal clients, the attorney may become more like a company general counsel or "in-house" lawyer.

Lawyers are agents and it is axiomatic that an attorney's authority to represent clients creates an agency and fiduciary relationship. Attorneys who regularly (and not "incidentally") make deals on a speculative basis in return for a contingent payment may still be required to be separately licensed as an agent under the applicable statute of the state in which the attorney's principal place of business is located. This should obviate the need for the attorney/agent to register as an agent elsewhere. However, should an attorney/agent establish an office or agency in a state in which he or she is not licensed to practice law, licensing under that state's rules as an agent (and certainly as an attorney, if the intention is to practice law) will be required.

In Chinn v. Tobin,⁵² the California Labor Commissioner ruled that an attorney who owned a production company was not procuring employment as an agent for an artist/client when he hired the artist to be in one of his productions. The Commissioner held that an attorney having an ownership interest in the employment is functioning as an employer, not as an agent "with third parties" within the meaning of the Act. However, conflict of interest issues were raised but not resolved by the Commissioner.

E. Special Considerations Regarding Lawyer Conduct

1. *Merging the Roles of Various Entertainment Representatives:*

Lawyers' ethical obligations are extensive and often long-lasting.⁵³ These obligations also create challenges for entertainment lawyers who perform services often rendered by other personnel, such as agents. The general rule is that entertainment attorneys who also act as agents or managers are still subject to their states' codes of professional conduct to the extent that any of their activities involve the delivery of legal services.⁵⁴ Lawyers cannot merely switch titles to avoid their ethical responsibilities. As a result, lawyers have taken different approaches to dealing with what is perceived as a competitive disadvantage in the entertainment business when acting in these other roles.⁵⁵ Some

52. Chinn v. Tobin, California Labor Comm'r Case No. 17-96 (1997).

53. *See Swidler & Berlin and Hamilton v. United States*, 524 U.S. 399 (1998) (holding that the attorney-client evidentiary privilege continues after the client's death).

54. It is also worth noting that Rule 5.4 of the MRPC prohibits lawyers from forming a partnership with a non-lawyer if any of the activities of the partnership or the professional corporation involves the practice of law. Similarly, a lawyer cannot permit non-lawyers to own shares of a professional corporation that he is involved in that delivers legal services. *Id.*; *see also* RPCC Rule 1-310.

55. Some contend that the applicability of the law profession's ethical codes to lawyers performing non-law services is

attorneys argue that when they act as an agent or a manager they are not providing legal services and, therefore, are not subject to the codes of professional conduct. This approach has some risk as lawyers' professional liability policies may not cover all of their services. Other attorneys formally establish separate businesses that render financial advice, career advice, or solicit employment opportunities. The attorneys may incorporate the businesses and employ full-time personnel but they expressly do not provide legal services.

As long as attorneys are licensed to practice law, they are subject to their states' codes of professional conduct for even their non-professional activities. Lawyers must be very careful when creating separate business enterprises to make sure that these are not used to circumvent the lawyer's ethical obligations. For example, a lawyer could create a separate talent agency and then solicit in-person talent for the agency. The lawyer could not use such solicitation however to develop clientele for his law practice.

2. *Advertising and solicitations.*

MRPC 7.2 and 7.3 governs lawyer advertisement and solicitation.⁵⁶ In general, lawyers can mail written advertisements and solicitations directly to prospective clients providing they are truthful and non-deceptive.⁵⁷ Lawyers may also advertise through recorded or electronic communication, including public media.⁵⁸ Lawyers "shall not by in-person, live telephone, or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's . . ." contact is pecuniary gain, unless the person contacted is a lawyer or has a family, close personal, or prior professional relationship with the lawyer.⁵⁹ Lawyers also cannot state or imply that they are specialists in a field of law, such as entertainment law, unless the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association and the name of the certifying organization is clearly identified in the communication.⁶⁰

not a settled area. See Robert E. Fraley & F. Russell Harwell, *Sports Law and the "Evils" of Solicitation*, 9 Loy. L.A. Ent. L.J. 21 (1989).

56. See RPCC, Rule 1-400. See generally, Jack P. Sahl, *The Cost of Humanitarian Assistance: Ethical Rules and the First Amendment*, 34 St. Mary's L. J. 795 (2003) (noting the increased emphasis on marketing by the legal profession and examining the history of lawyer advertising).

57. MRPC, Rule 7.1; see Shapero v. Kentucky Bar Association, 486 U.S. 466 (1988); see also Florida Bar v. Went For It, Inc., 515 U.S. 618 (1995) (upholding a limited 30-day ban on written solicitation by lawyers to accident victims and their families to protect privacy of state's citizens and the "flagging reputation of state's lawyers"). See generally Bates v. State Bar of Arizona, 433 U.S. 351 (1977).

60. MRPC, Rule 7.2(a).

59. See MRPC, Rule 7.3(a); see RPCC, Rule 1-400.

62. MRPC, Rule 7.4 (d).

Entertainment lawyers can communicate or promote their legal services in several ways in hope of developing their practice. The most effective way is to establish a strong reputation for providing competent and efficient legal work with the general public as well as the profession. Satisfied clients will return with more work and they will refer new clients. Lawyers should create a profile in the arts and entertainment community by attending performances and other related events, for example, awards ceremonies and benefits. Lawyers should volunteer their service for arts organizations, for example, by serving on the board of directors. Authoring entertainment law articles, attending continuing legal education programs, speaking to groups, and traditional advertising - notices in trade magazines or firm brochures - are all ways to network and to develop an entertainment practice.

3. *Referrals and fee splitting.*

Many entertainment lawyers rely on referrals for their services from a variety of sources, including previous clients, lawyers, agents, managers, and personnel with entertainment companies. Referrals with conditions attached, for example, a desire to be retained as the client's manager or agent, raise serious conflict of interest issues. In addition, lawyers are prohibited from paying persons to refer clients.⁶¹ MRPC 1.5(e) does permit lawyers to refer cases to other lawyers or to associate lawyers in their cases and share the fee. The clients must agree to the arrangement, including the share each lawyer will receive, and the agreement must be confirmed in writing.⁶²

The lawyers' share must reflect their work or their assumption of joint responsibility in the case.⁶³ MRPC 1.5(e)(3) requires that the total fee be reasonable.

D. COMPENSATION FOR ATTORNEY SERVICES AND AGREEMENTS

Entertainment lawyers deal in the development of creative material. Their relationships with talent and entertainment companies are important to developing a successful practice. Lawyers market or "shop" talent and their creative properties to companies for purchase, license and ultimately for commercial exploitation. Shopping talent and their properties is highly speculative work - only a very small percentage of talent or their properties ever achieve commercial success. Since many entertainment clients cannot afford to retain lawyers on an hourly basis for their services, including shopping their creative work, clients and lawyers instead often agree to a contingency fee arrangement. A comprehensive retention agreement for legal services should unambiguously address scope of representation and the basis of payment. [See Engagement Letters, Forms I and II]. A separate shopping agreement may also be considered if this is the primary or only service provided by the attorney. [See Form III].

Unlike employment contracts with managers and agents [See Management Agreement, Form

61. MRPC, Rule 7.2(b); see RPCC, Rule, 1-320.

64. MRPC, Rule 1.5(e)(2).

63. MRPC, Rule 1.5(e) (1)-(3).

V], clients can terminate employment contracts with lawyers at any time.⁶⁴ If a client terminates his or her lawyer, the lawyer is generally entitled to only quantum meruit recovery. Lawyers offer a broad range of professional services and it may be useful to have a specific contractual provision regarding the lawyer's shopping services and compensation. To help ensure that a lawyer's work is covered by his or her professional liability insurance, the retention agreement should specify that the client is retaining the lawyer primarily for law-related services.⁶⁵ If the retention agreement provides for compensation based on an hourly rate, the rate for the lawyer's services will vary depending on a several factors, including the complexity of the representation, the lawyer's unique skills and experience, and the value for such services in a particular geographical area. Representation of a more national or international nature may generate higher hourly rates than for more local work. Lawyers' hourly rates for entertainment work can range from \$200 to 400 per hour - with lawyers on the east and west coasts earning more within the range.

A customary contingent fee ranges from 5% to 10% of the defined gross compensation of the client and rarely exceeds 10%. The exact percentage depends, in part, on the client's record for commercial or critical success and the likelihood that the lawyer's efforts will be successful. For example, it is reasonable with a superstar to take a lower percentage of the gross compensation and with a new or "baby act" to insist on 10%. Successfully shopping a new artist to a recording contract with a small, local, independent record company is a situation in which a lawyer might charge 10% of the artist's gross compensation. A lower contingency fee is expected if coupled with a reduced hourly fee. In both the hourly rate and the contingency fee arrangements, the client usually pays the out-of-pocket costs.

In the contingency fee circumstance, the definition of gross compensation is important and a source of great controversy. In many entertainment contracts, gross compensation is defined broadly. It may exclude, however, income that is not derived from or enhanced by the lawyer's professional services. For example, when representing a book author, it may be appropriate for the lawyer to include in gross compensation income from book publishing and also proceeds from television, a motion picture, or personal appearances. The lawyer wants to apply the contingency rate or commission to as much of the client gross compensation that is reasonable in the industry and under the MRPC. This may be justified because first, the book deal created all the other commercial opportunities for the client-author and second, the lawyer's legal services are being used in these other areas. It is worth noting, that it may be in the client-author's best interests to exclude some streams of income, such as proceeds from music, theatrical, or other "unrelated" sources. Like managers, agents and entertainment companies, lawyers are reluctant to limit the possible sources or streams of income. They usually insist on a percentage of the gross compensation from any source, whether known or yet to be discovered, especially given the trend in multimedia and the crossover nature of entertainment products in new technology. Lawyer contingency agreements, like personal management contracts, may also contain a "sunset" provision. It requires the client to pay the contingency fee for the lawyer's past services even after the representation is terminated, usually for a period of six to twelve months. In addition and distinct from the sunset provision, the lawyer may

64. MRPC, Rule 1.16, Comment [4] (stating that clients have the right to discharge, with or without cause, their attorneys).

65. See *supra* note 6.

negotiate and receive an ongoing commission on the client's proceeds derived from deals that the lawyer helped to procure for the client. The commission may be for a limited period or extend for so long as the artist receives royalties from that source.

Model Rule 1.5 requires hourly and contingent fees to be reasonable.⁶⁶ Attorneys can consider the following criteria in determining a reasonable fee: "the time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly; . . . the fee customarily charged in the locality for similar legal services; the amount involved and the results obtained; . . . the experience, reputation, and the ability of the lawyer or lawyers performing the services required; and whether the fee is fixed or contingent."⁶⁷ These criteria offer attorneys great flexibility and protection in charging fees. Thus, it is not unusual to find entertainment lawyers in different parts of the country charging similar fees for national or international projects because of the unique skill and experience they share in the field.

Contingent fee agreements must be in writing, signed by the client, and "state the method by which fees are to be determined, the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable, whether or not the client is the prevailing party."⁶⁸ Contingent fees tend to produce more income for attorneys than hourly fees. This is permissible, in part, because there is often a risk with contingent fees that the attorney will not be paid because the representation is unsuccessful. For many entertainment attorneys, the potential value of a deal or successful representation dictates the amount or reasonableness of a contingency fee.⁶⁹

Entertainment attorneys often assist in the personal management of a client. Managers frequently bill between 15% and 25% of a talent's gross income for their services. Attorneys assuming managerial responsibilities may wish to consider the customary amounts that managers are paid in setting a reasonable contingency fee. [See Form VI: Legal Services Including Management Functions]

In some entertainment fields, it is customary for the talent's services to be provided by a "loan-out" corporation, a "personal services" corporation, or some other entity, owned and controlled by the talent. Such entities include production, music touring and merchandise companies. The lawyer's Engagement Letter of Agreement should either acknowledge or anticipate the representation of these entities by including them as parties or having a contractual provision that designates the lawyer as the counsel for the entities upon their formation.

66. See RPCC, Rule 4-200.

67. MRPC, Rule 1.5(a)(1)-(8).

68. *Id.* at (c).

69. Some types of practices, such as personal injury or debt collection, have contingency fees that range from 33% to possibly 50%.

E. SANCTIONS

State supreme courts regulate the right to practice law even for lawyers who never appear in court.⁷⁰ These courts establish codes of professional conduct and disciplinary systems to protect the public and the bar. Federal courts usually defer to state admission standards in admitting lawyers and admission is only necessary for those lawyers who practice in a particular federal court.⁷¹ Both state supreme and federal courts can discipline lawyers.

There are two principle methods by which the public can hold lawyers and judges accountable for their misconduct.⁷² The first method is filing a lawsuit against an attorney for civil liability.⁷³ Most lawsuits filed against attorneys are for negligence, a fiduciary breach, breach of contract or fraud.⁷⁴ Successful plaintiffs in lawyer liability cases are entitled to attorneys' fees and to punitive damages when the attorney's conduct involves gross negligence or malice.⁷⁵

The second method of holding lawyers accountable involves the states' disciplinary systems. Clients and others can file a grievance against an attorney with the state authority responsible for reviewing lawyer conduct, for example, the statewide disciplinary counsel. These authorities often rely on assistance from state and local bar associations to receive, review, investigate, prosecute, and hear grievances. Grievances and sanctions against lawyers have increased in recent years. The range of sanctions for lawyer discipline include: disbarment, suspension, formal reprimand, informal reprimand and a fine. One or more of these sanctions may be applied to an attorney for one significant violation or an accumulation of lesser violations of a state's professional conduct code.

Case Sera Sera

70. Morgan, *supra* note 8, at 41.

71. *Id.*

72. Judicial immunity largely insulates judges from civil liability for their official conduct.

73. *See* Mallen, *supra* note 5, at 554-55. Lawsuits against lawyers for professional liability are generally referred to as malpractice actions. Although there is little consensus or discussion about the meaning of legal malpractice, it commonly describes a kind of tortious conduct. *Id.* at 2. Liability for professional negligence is certainly included within the meaning of malpractice. *Id.* at 3-5.

74. The most common action brought against attorneys is for negligence. The essential elements of a negligence claim are: "(1) the employment of the attorney or other basis for imposing a duty; (2) the failure of the attorney to exercise ordinary skill and knowledge; and (3) that such negligence was the proximate cause of damage to the plaintiff;" and (4) actual damages. *Id.* at 607-08. As part of a lawyer malpractice action, courts have traditionally required the plaintiff to show that but for the attorney's conduct the client would succeeded in the underlying claim. *See, Kituskie v. Corbman*, 714 A.2d 1027 (Pa. 1998) (holding that the uncollectability of a judgment in the underlying action is an affirmative defense to a malpractice claim against an attorney); *see also* Morgan, *supra* note 8, at 89 (discussing lawyer malpractice claims and the so-called "suit-within-a-suit" requirement).

75. *Patrick v. Ronald Williams, P.A.*, 402 S.E.2d 452 (N.C.App. 1991); *see Togestad v. Vesely, Otto, Miller & Keefe*, 291 N.W.2d 686 (Minn. 1980); 4 DUNNELL MINN. DIGEST *Attorneys* §11.00 (4th ed. 1989).

In May 1956, Jerome B. Rosenthal entered into a retainer Agreement with Doris Day Melcher and continued to present her as an attorney, business manager, business adviser and agent until his services were terminated in July 1968. Later that year, Doris Day Melcher and her son, Terrence Melcher, filed a complaint with the state bar against Rosenthal. Disciplinary proceedings resulted in the State Bar Court unanimously recommended that he be disbarred. The case presents facts instructive of what lawyers also functioning as an agent and manager should not do and what can happen when they do.

The Supreme Court of California, in affirming the disbarment, held that Rosenthal engaged in transactions involving undisclosed conflicts of interest, took positions adverse to his former clients, overstated expenses, doubled billed for legal fees, failed to return client files, failed to provide access to records, failed to give adequate legal advice, failed to provide clients with an opportunity to obtain independent counsel, filed fraudulent claims, gave false testimony, engaged in conduct designed to harass his clients, delayed court proceedings, obstructed justice and abused legal process.⁷⁶

76. Jerome B. Rosenthal v. State Bar of California, 43 Cal.3d 612, 238 Cal.Rptr. 377 (1987). Que Sera, Sera (Whatever Will Be, Will Be), Doris (Kappelhoff) Day, from the film "The Man Who Knew Too Much" (1955) (song also recorded for Columbia Records).

FORM I: HOURLY FEE WITH RETAINER FEE

**[LAW FIRM]
RETAINER AGREEMENT
AND
POLICIES FOR NEW CLIENTS**

Dear _____:

[LAW FIRM] is pleased to have the opportunity to serve you. Because you are a new client, we are providing the following information about our standard client service practices and billing procedures. These practices and procedures will apply to your account unless you have reached a different written understanding with us. We ask that you review this document and if acceptable, sign and return it to us in the self-addressed stamped envelope. We cannot undertake [further] legal representation of you or render [further] advice until we have entered an acceptable retainer agreement. Two copies are enclosed so that you may retain a copy.

Personnel

One lawyer will generally be assigned primary responsibility for your case. When appropriate, additional lawyers may from time to time assist, or replace others. We attempt to assign lawyers and other personnel on the basis of experience, expertise, nature, scope of the issues, and time constraints imposed by the matter.

Basis for Fees

Depending on the nature of the representation, our fees for a particular matter are based upon a variety of factors. Those factors include the time spent on the matter, the novelty and difficulty of the questions involved, the experience, reputation, and abilities of the lawyers rendering the services, the amount at issue, the results obtained, time limitations imposed by you or by the circumstances of the matter, and whether work on this matter will prevent the firm from rendering services to other clients. We are also guided, but not controlled, in setting fees by the customary hourly rates of our lawyers and legal assistants for working on comparable matters. These rates typically are adjusted annually. Presently [Mr./Mrs.] _____'s time is billed at \$_____ per hour.

While we generally will be rendering bills on an hourly basis, there may be instances where we will be using prior work product or computer models, simulations or spreadsheets which have been developed specifically to perform services relative to your assignment. Since it is both for your benefit as well as ours to utilize these tools in providing services to you, the amount billed may not necessarily correlate with the time involved to perform all or part of your project. In all cases, however, the charges will be less than if we had to perform the tasks or services without the benefit of these tools.

Costs and Expenses

In addition to fees for services, you will also be responsible for advancing or reimbursing us for costs and expenses we incur on your behalf. Such costs and expenses will be billed to you and will include photocopy charges ([20¢] per page), computerized legal research, staff overtime if required to meet deadlines imposed by you, travel expenses, filing fees, registration fees for copyrights and trademarks, messenger fees, long-distance telephone charges, outgoing and incoming fax ([50¢] per page), Federal Express or overnight delivery charges, secretarial overtime which is due to special needs of your matter, and miscellaneous expenses. To the extent we advance those costs on your behalf, you agree to reimburse us for them; and from time to time we may request that you make an advance payment for an unusual cost item. We will get your prior permission before incurring large client cost disbursements. No single expense of [\$100] or more will be expended without your prior written consent.

Retainer Fee

Before we commence [continue] providing legal services, we will require a \$_____ [non-refundable] retainer fee. [Any unused amount shall be returned to you]. This amount shall be credited against the first legal services rendered to you.

Monthly Invoices and Delinquent Accounts

We typically bill on a monthly basis. Payment is due upon receipt of the invoice. A Statement of Account will be forwarded to you automatically each month if you have any outstanding invoices. [Firm Name], like other businesses, requires accounts to be paid promptly. Please understand that no matter how your payment is designated to be applied, all payments received will first be applied against accrued late payment charges, then to costs or expenses advanced or incurred, and last to fees. We add a late payment charge to accounts not paid within thirty days of the invoice date. The late payment charge is currently assessed at a rate of [1%] per month on any unpaid balance for corporations and [.66%] per month for individuals. In the event that an account becomes delinquent, the firm employs prudent collection procedures and the firm may discontinue representation. If an account goes unpaid for 120 days after the services are rendered, the account is referred to an attorney for collection. By entering this Agreement, you also agree to pay all costs incurred by this firm in collecting on your delinquent account, including reasonable attorneys' fees.

Conflicts of Interest

We have performed a name check of our other clients to see if our representation of you would create a conflict of interest for our firm. That check was done using your name and other names you gave us before we commenced working for you. Please inform us immediately if you use other names or have affiliated companies that you wish us to check for possible conflicts.

You understand that we represent other parties in the field of entertainment (and may have certain ownership or participation interests in entertainment ventures), and that from time to time conflicts of interest may arise between you and other clients of the firm. If a conflict arises of which

we are aware we shall promptly advise you and we will try to assist in resolving such conflicts. If such conflict cannot be overcome, we will have the right to represent you, to represent others, or to withdraw completely. In any such case, it may be necessary for you to engage separate counsel.

Termination of Services

We retain the right to cease performing legal services, and to terminate our representation of you, for any reason consistent with the applicable ethical rules, including unanticipated conflicts of interest or delinquency or nonpayment of legal fees and expenses incurred on your behalf, or your failure to cooperate with us at all times during the course of our representation.

You can terminate this Agreement at any time for any reason or for no reason. If you terminate us or if we quit, you agree to pay any undisputed hourly fees and charges due through the date of termination and the Contingent Fees as they come due as hereinafter provided and any services or costs incurred, including copying charges of any files, thereafter in connection with the resultant transition to your successor counsel; and, if you request and we agree, through whatever project benchmark or assignment you want us to complete. We will, of course, extend every professional courtesy to your new counsel if we are replaced, including delivery of all files. Disputed fees and charges will be resolved by arbitration as provided in this Agreement. Unless you and we otherwise agree in writing, we shall have no obligation to retain your files beyond one year after our services conclude.

Independent Attorney Review.

We advise you to seek outside counsel in connection with this agreement and your execution hereof. We cannot represent you in connection with any agreement with us and we give you no advice.

Estimates and Engagement Retainer.

At your request, from time to time, we will estimate our anticipated hourly fees on particular matters not covered by the Contingent Fee arrangement, but we cannot warrant that our estimates will be met, since legal costs cannot be predicted and are subject to many variables which neither we, nor you, can control.

Avoiding Disappointed Expectations and Resolving Disputes.

We want to serve you well. We believe that the best way to avoid disappointments and misunderstandings is for there to be frequent and open communication between us. You understand that we make no promises or guarantees about the outcome of any matter. If a dispute between us should arise, we want to settle it quickly and fairly. We will try to do so through discussion. If we are not successful in doing so, then both parties agree to settle any dispute arising between us by prompt, confidential and binding arbitration under the auspices and pursuant to the rules of the American Arbitration Association in [city, state].

Client's Duties.

You agree to be truthful to us, to cooperate and keep us fully informed of developments, to abide by this Agreement, and to pay our bills, and our Contingent Fees promptly.

Miscellaneous Provision.

This Agreement represents the entire agreement between the parties concerned and the subject matter hereof and supersedes all prior agreements with respect thereto between the parties hereto and any of them. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives. This Agreement shall be subject to and governed by the laws of the [State of _____] and all questions concerning the meaning and intention of the terms of this Agreement and concerning the validity hereof and questions relating to the performance hereunder shall be adjudged and resolved in accordance with the laws of said state. Whenever possible, each provision of this Agreement and each related document shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement or any related document shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement or such related documents. This Agreement may not be and shall not be deemed or construed to be modified, amended, rescinded, canceled or waived in whole or in part except by written instrument signed by the parties hereto.

Signing.

If you agree, sign and return. Please indicate your approval and agreement to the scope and terms of our engagement by executing the enclosed copy of this letter and returning it to me. If you have any questions, please call me.

Questions

One of our goals is to ensure that legal services are delivered effectively and efficiently and that all billings are accurate and understandable. Please direct any questions about services or billing practices to the lawyer responsible for your account. Any questions regarding the billing or payment status of your account should be promptly directed to [Office Manager] in our office at (____) ____-____.

[FIRM NAME]

By _____
[Attorney Name]

* * * * *

OPTION ONE - INDIVIDUAL

I have received and hereby accept the terms of this Retainer Agreement and Policies for New Clients this _____ day of _____, 20____. **[I understand that the funds may not be held in a trust account and I may not receive a refund of the fees if I later choose not to hire the law firm or choose to terminate the law firm's services.]**

[Individual's name]

OR

[BUSINESS ENTITY]

By _____
[name]
Its _____
[authorized signatory]

* * * * *

OPTION TWO- BUSINESS ENTITY WITH PERSONAL GUARANTEE

Personal Guaranty for Legal Services to an Entity

I agree to pay all legal fees and costs for legal services rendered on my behalf by **[Firm Name]** in all legal matters including, but not limited to, legal services that are rendered to **[business entity]**.

BUSINESS ENTITY

By _____
[name]

Its _____
[authorized signatory]

FORM II

**GENERAL LEGAL REPRESENTATION SERVICES
INCLUDING MUSIC SHOPPING SERVICES**

_____, 20__

Jane Doe
John Doe

address

Re: ENGAGEMENT LETTER OF AGREEMENT

Dear Jane and John:

We are delighted to work with you and thank you for selecting our firm as your attorneys in connection with ongoing general counsel services related to your recording and entertainment career. "You" or "your" herein refers to "Jane Doe and John Doe, professionally known as "The JJ Band" or any entity subsequently formed by either of you or any renaming of any entity which continues to feature you as a music artist in the Entertainment Business (as defined in paragraph 4.d). Our engagement will be covered by the terms of this Agreement, unless we mutually agree otherwise in writing.

1. **TERM.** The Term of this Agreement is effective as of _____, 200__ and will continue until terminated in writing by either you or us subject to continuing payments under paragraph 4 and further subject to our exclusive representation of you for "Shopping" (as defined in paragraph 2.c).

2. **SCOPE OF SERVICES PROVIDED.**

a) We will serve as legal counsel to you on legal matters which shall generally include transactional work (negotiating and drafting contracts) and advising on the following matters: intellectual property (including trademark and copyright filings); shopping to secure a music recording, music publishing, personal management and business management contract, which decision to enter shall be in your sole judgment; public appearances; literary; books; film and telefilm matters; the formation or

maintenance of business entities; labor; coordination and general supervision or engagement of other lawyers or experts; and other reasonably related services involving the Entertainment Business (“Services”). _____ will be your primary lawyer. We shall work in the interest of forwarding your career in the Entertainment Business. We shall be directly accountable to you.

b) The Contingent Fees (as provided in paragraph 4. herein), do not include compensation for our rendering legal advice on matters such as securities, investments, money management, tax, litigation, arbitration, and other matters that are not set forth in paragraph 2.a) hereof. The Contingent Fees do not include rendering Services in states, countries or jurisdictions in which the matter requires that we must be admitted to practice law. For those matters not covered by Contingent Fees, we will advise you of the current hourly billing rates and you can decide whether or not you would like us to provide needed legal services.

c) Shopping. We shall work with you to present your music and artistry to recording companies and publishing companies with the goal to secure Recording and Publishing Agreements (as defined in paragraph 4.b)(ii)) with companies and upon terms to be approved at your sole discretion (“Shopping”). We shall be your exclusive Shopping representative for one (1) year (“Shopping Period”) and will diligently present your music and assist you with identifying and corresponding with recording and publishing companies.

3. **TERMINATION.** Subject to the conditions set forth in paragraph 1., you can terminate this Agreement at any time for any reason. We can terminate this Agreement, at any time, if we feel we can no longer properly represent you for any reason. Upon termination, you will pay us: (1) any undisputed hourly fees and charges due through the date of termination; (2) Contingent Fees as they come due and (3) any costs incurred, including copying charges for any files in connection with any transfer thereof. If you and we agree, we shall provide Services through whatever project benchmark or assignment you want us to complete. Disputed fees and charges will be resolved by arbitration (see paragraph 7 below). Unless you and we otherwise agree in writing, we shall have no obligation to retain your files beyond one year after our Services conclude.

4. **CONTINGENT FEES AND COSTS.**

a) Contingent Fees. For Services to be rendered for the matters set forth in paragraph 2.a) hereof you shall pay us as “Contingent Fees” on “Gross Compensation” (as defined in paragraph 4.d) herein) from all sources in the Entertainment Business as follows:

(i) Five percent (5%) of Gross Compensation. Upon the termination of this Agreement, this amount shall be paid on Gross Compensation earned during one (1) year following termination. This amount shall exclude Contingent Fees for Shopping.

(ii) With respect to any recording agreement or music publishing agreement entered into or negotiated during the Term or Shopping Period, as a result of our Shopping efforts (“Recording and Publishing Agreements”), we shall be paid ten percent (10%) herein, on any money advances payable to you under the Recording and Publishing Agreements. The advances payable to you shall include any artist personal advance and any balance remaining to which you are entitled from a recording budget and/or recording fund (“Advances”). The Contingent Fees shall apply to Advances payable to you applicable to the first album under any Recording and Publishing Agreements [or for a set number of years]

After the Term, we shall be paid Contingent Fees of five percent (5%) in perpetuity of all royalties payable to you or earned by you after repayment by you of any recoupable amounts payable for recording costs, as defined in the applicable recording agreement, against royalties applicable to the First Album and further limited to recordings and compositions written by you which are released and exploited under the Recording and Publishing Agreements. [Post term commission limited to one album].

b) Costs. In addition to Contingent Fees, you will also be responsible for advancing or reimbursing us for costs and expenses we incur on your behalf. Such costs and expenses will be billed to you and will include photocopy charges (____¢ per page), travel expenses, filing fees, registration fees for copyrights and trademarks, messenger fees, long-distance telephone charges, outgoing and incoming fax (____¢ per page), overnight delivery charges, and miscellaneous related expenses. To the extent we advance those costs on your behalf, you agree to reimburse us for them; and from time to time we may request that you make an advance payment for an unusual cost item. We will get your prior permission before incurring large client cost disbursements. No single expense of \$100 or more will be expended without your consent.

c) “Entertainment Business” shall mean and include any and all branches of the entertainment, literary, broadcasting, merchandising and/or commercial exploitation fields now existing or hereafter developed, direct or ancillary, including without limitation, all forms of motion pictures, personal appearances, personal endorsements, touring, radio, recorded music, music publishing, digital music distributions, books and printed material, television, telefilm, videodiscs and videocassettes.

d) “Gross Compensation” shall mean and include, without limitation, salaries, advances, earnings, fees, royalties, residuals, repeat and/or rerun fees, gifts (but only if such gifts are in lieu of partial or full compensation to you), and any form of payment in kind or bartered or exchanged services, bonuses, shares of profit, shares of stock, partnership interests, percentages and the total amount paid to you for any record package, television or radio program (live or recorded), motion picture or other entertainment packages, and/or which are earned and received directly or indirectly by you or your heirs, executors, administrators or assigns, or by any other person, firm or corporation as your compensation for activities in the Entertainment Business. With

respect to stock, or the right to buy stock, in any corporation, our percentage shall apply to said stock, or the right to buy stock, and we shall be entitled to our percentage share thereof. If any corporation, partnership, trust, joint venture, association, proprietorship or other business entity in which you have a direct or indirect interest shall receive any revenues or compensation for permitting or contracting for the use of your services, name, likeness or endorsement, then your proportionate share of such revenues or compensation shall be deemed to be Gross Compensation received by you for the purposes of this Agreement.

e) Notwithstanding the foregoing, with respect to your personal appearances, for purposes of computing commissions hereunder, there shall be deducted from "Gross Compensation" earned by you in respect thereof, when applicable, the amount which shall be payable by you or on your behalf for (i) "Sound and Lights" (generally the direct cost to you for third-party-provided sound and lighting reinforcement for live performances) for such engagements; (ii) regarding personal appearances: agency fees, directly related transportation fees, equipment rental fees and lodging expenses; (iii) payments paid by you, or paid on your behalf, to third parties in the nature of deficit tour support; and (iv) bona fide loans. [These are limited deductions sometimes the deductions may mirror those agreed to in a third party personal management agreement].

5. **REVIEW BY INDEPENDENT COUNSEL.** We hereby advise you to seek outside counsel in connection with this Agreement and your execution hereof. We cannot represent you in connection with any agreement with us and we give you no advice.

6. **BILLING LOGISTICS.**

a) Our Contingent Fees are payable upon payment to you of Gross Compensation to which such Fees pertain. In that regard, we may include in any agreement which we negotiate on your behalf, as to which Contingent Fees apply, a provision irrevocably requiring the remitter to directly pay to us the Contingent Fees on your behalf simultaneously with payment to you of Gross Compensation. You shall render an accounting to us within fifteen (15) days of the end of each month, and with each payment you make to us showing the basis of such payment.

b) We, our accountants, attorneys or agents shall have the right to review your determination or calculation of Gross Compensation and the financial figures supporting the computation of your payments from Gross Compensation and any and all other relevant or supporting documents on which any Contingent Fee due us was or could be made. If we shall so request, which shall be no more than once a year, we shall be given the opportunity, upon reasonable advance written notice, and in a manner calculated to provide the least disruption to your business operations, review and audit the underlying figures giving rise to the Contingent Fee computations. Any such audit shall be conducted at our sole expense, except that, if the audit discloses that Contingent Fees paid to us were understated by an amount in excess of 10% for any Term Year, then you shall reimburse us for the reasonable expense of such audit.

7. **AVOIDING DISAPPOINTED EXPECTATIONS AND RESOLVING DISPUTES.** We want to serve you well. We believe that the best way to avoid disappointments and misunderstandings is for there to be frequent and open communication between us. You understand that we make no promises or guarantees about the outcome of any matter. If a dispute between us should arise, we want to settle it quickly and fairly. We will try to do so through discussion. If we are not successful in doing so, then both parties agree to settle any dispute arising between us by prompt, confidential and binding arbitration under the auspices and pursuant to the rules of the American Arbitration Association in _____.

8. **CONFLICTS OF INTEREST.** You understand that we represent other parties in the Entertainment Business, and that from time to time conflicts of interest may arise between you and other clients of the firm. If a conflict arises of which we are aware we shall promptly advise you and we will try to assist in resolving such conflicts. If such conflict cannot be overcome, we will have the right to represent you, to represent others, or to withdraw completely. In any such case, it may be necessary for you to engage separate counsel.

9. **MISCELLANEOUS PROVISION.** This Agreement represents the entire agreement between the parties concerned and the subject matter hereof and supersedes all prior agreements with respect thereto between the parties hereto and any of them. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives. This Agreement shall be subject to and governed by the laws of the State of _____ and all questions concerning the meaning and intention of the terms of this Agreement and concerning the validity hereof and questions relating to the performance hereunder shall be adjudged and resolved in accordance with the laws of said state. Whenever possible, each provision of this Agreement and each related document shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement or any related document shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement or such related documents. This Agreement may not be and shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived in whole or in part except by written instrument signed by the parties hereto.

10. **SIGNING.** If you agree, sign and return. Please indicate your approval and agreement to the scope and terms of our engagement by executing the enclosed copy of this letter and returning it to me.

We look forward to working with you.

Yours very truly,

By: _____
Attorney

Approved and agreed.

Dated: _____, 200_

[Artist]

FORM III

MUSIC SHOPPING AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 20____, by and between _____ **[individual(s) or entity]**, _____ (hereinafter referred to as "Artist"), with its principal residence at _____ and **[ATTORNEY NAME and FIRM NAME]** (hereinafter referred to as "Counsel"), with offices at **[address]**.

It is understood that Artist seeks to enter into a Record Contract as defined herein; and that Counsel, by reason of Counsel's contacts, experience and background, is qualified to represent Artist's interest in procuring offers to enter into a Record Contract. Therefore, Artist and Counsel agree as follows:

1. **SCOPE OF AGREEMENT.** Artist hereby engages Counsel during the term hereof to exclusively represent, counsel, advise and solicit offers on Artist's behalf for a Record Contract between Artist and a Record Company which shall include a Major Record Production or Distribution Company, an Independent Record Company, or a Pressing and Distribution Company (or Companies), collectively referred to as "Record Company" and defined further as follows:

- a. Major Record Production or Distribution Company includes Universal/ BMG, EMI/Capitol, Sony, Warner Bros. Records or any related imprint or affiliated labels.
- b. Independent Record Company includes any other Independent Record Production or Distribution Company.
- c. Pressing and Distribution Company includes companies which manufacture and distribute Artist's produced, recorded material.

2. **REPRESENTATION.** This agreement, and the fees, expenses and compensation earned by Counsel hereunder, is limited solely to Counsel's solicitation of offers on Artist's behalf for the purpose of procuring an offer to enter a Record Contract. This Agreement also governs the negotiation of a Record Contract or other legal matters which may arise from time to time. "Negotiation" or "Negotiations" is defined as the conducting of communications and/or conferences resulting from an offer to enter a written Record Contract. In the event Artist desires Counsel's services for other legal matters, said legal services will be performed under the terms of a separate representation agreement, and shall be paid from funds other than those deposited in the **[FIRM NAME TRUST ACCOUNT]** as set forth in Section 4.a).

3. **TERM.**

a. The term of this Agreement shall be for a period of **[twelve (12) months]** commencing on the date hereof.

b. If Counsel is engaged in negotiations with a Record Company during which time this Agreement would otherwise terminate, then, upon written notice given by Counsel, prior to the termination hereof, this Agreement shall be extended for a reasonable period of time, not to exceed **[six (6) months]** to conclude said negotiations. In the event Counsel brings Artist an offer from a Record Company, Artist agrees to promptly enter into good faith Negotiations with the Record Company until Artist informs Counsel that Negotiations are completed and a Record Contract is signed by the parties thereto or until Negotiations cease. **[Acceptance or rejection of an offer is solely at the discretion of the Artist.]**

c. If Artist rejects an offer from a Record Company during the term hereof, and subsequently accepts an offer from that Record Company within a period of **[twelve (12) months]** following the termination hereof, it shall be deemed that the Record Contract was executed during the term of this Agreement.

d. Counsel will keep Artist fully informed about all solicitations. Counsel will send to Artist a list of all solicited Record Companies and copies of all correspondence relating to the solicitations conducted in connection with this Agreement.

4. **FEES AND EXPENSES.**

a. For fees and expenses, Artist shall pay Counsel a **[\$1,000 to \$5,000]** retainer in _____ equal installments of \$_____. The amounts not drawn from the retainer are refundable to Artist. Counsel shall deposit the retainer amount in **[FIRM NAME] TRUST ACCOUNT**. Counsel shall thereafter draw from said account for legal fees rendered and expenses incurred in connection with performing this Agreement.

[b. Expenses incurred by Counsel shall include one out-of state trip (i.e. New York, NY; Los Angeles, CA; Nashville, TN) as may be required to perform this Agreement.]

c. Apart from the fee and expense provisions set forth in this Section, Artist shall have no liability to Counsel for the reimbursement of Counsel's legal fees or expenses incurred in connection with the performance of this Agreement.

5. **COMPENSATION.**

a. Upon execution of a Record Contract, Counsel shall receive from Artist as further compensation for services rendered hereunder a sum of money equal to the percentages of Artist's "Gross Income" (as defined below) as follows:

(i) **[Three (3%) percent to ten (10%) percent with 5% most common**

depending on what , if any, retainer fee is paid] of Gross Income attributable to the "recording fund" allocated by the Record Company for the recording of master recordings for the life of the Record Contract. In the event the contract provides for a personal advance to Artist and recording budget (as opposed to a "recording fund"), then the total of the advance and "recording budget" shall be substituted for the recording fund in calculating Counsel's compensation. **[Another arrangement is five (5%) percent of the "fund" or equivalent on the first album and five (5%) percent of the amount equaling the personal advance on subsequent albums under the contract];** and

(ii) **[Three (3%) percent to five (5%) percent]** of Gross Income earned by Artist, subject to the recoupment of actual recording costs by the Record Company, of royalties earned by Artist and not paid to a third party producer from the Record Company, from the sale of master recordings derived therefrom, forever.

b. The term Gross Income, as used herein, refers to the total of all earnings pursuant to the Record Contract, and any including contracts derived from the sale or licensing of music featured in the master recordings for the life of the Record Contract **[a shorter period would be for so long as Artist is obligated to deliver and record masters and for a period of two to five years thereafter which is the time it may take to recoup and "work" the record after its release]**. Said Gross Income shall not be accumulated or averaged and shall include salaries, bonuses, royalties based on sales or advances against royalties or any pecuniary substitute thereof, earned by Artist or by any of Artist's heirs, executors, administrators, assigns or by any person, firm or corporation (including Counsel) on Artist's behalf. It is understood that, for the purposes hereof, no expense, cost or disbursement incurred by Artist in connection with the receipt of Gross Income shall be deducted therefrom prior to the calculation of Counsel's compensation hereunder except as follows:

(i) Advances recoupable from Artist's royalties actually paid to third parties for recording costs including, without limitation, recoupable producer's fees, advances and royalties;

(ii) Advances recoupable from Artist's royalties actually paid to third parties for video production and television costs;

(iii) Advances recoupable from Artist's royalties actually paid to third parties for tour support including, without limitation, sound and light expenses, transportation and equipment rental.

c. Counsel's compensation pursuant to Section 5(a)(i) above shall be paid promptly upon execution of the Record Contract. Counsel's compensation pursuant to Section 5(a)(ii) above shall be paid at the time Gross Income is paid to Artist and shall be accompanied by a copy of any statement of accounting rendered to Artist by Record Company. Artist may elect to include a provision in the Record Contract requiring that Counsel's compensation be paid by Record Company directly to Counsel as a third-party

beneficiary to the Record Contract.

d. There is no limit on Counsel's compensation under Section 5 of this Agreement. **[Conversely, a limit may be a negotiable term depending on the degree of speculative work undertaken by attorney.]**

6. **MUTUAL WARRANTIES AND REPRESENTATIONS.** Both parties warrant and represent that no act or omission hereunder will violate any right or interest of any person or firm or will subject the other party to any liability or claim of liability to any person. Both parties warrant that they are under no disability, restriction or prohibition with respect to their rights to execute this Agreement and perform its terms and conditions. Both parties agree to indemnify the other party and to hold the other party harmless against any damages, costs, expenses, fees (including attorney's fees) incurred by the other party in any claim, suit or proceeding instituted against the other party in which any assertion is made which is inconsistent with any warranty, representation or covenant of that party. A party's obligation to indemnify shall be conditioned upon prompt notice of any asserted claim for which indemnification may be sought and upon that party's right to intervene and participate, at its own expense, in defense of the claim.

7. **NEW MEMBER.** In the event that at any time hereafter a new member is intended to be added to Artist as an addition to Artist, Artist shall immediately inform any such prospective additional member of this Agreement of all of its terms and shall immediately inform Counsel of the name and address of any additional member and shall immediately cause such additional member to execute this Agreement.

8. **MISCELLANEOUS.**

a. Artist and Counsel each acknowledge that they have carefully read this Agreement and that they fully understand its contents.

b. There shall be no change, amendment or modification of this Agreement unless it is reduced to writing and signed by all parties hereto.

c. No waiver or any breach of this Agreement shall be construed as a continuing waiver or consent to any subsequent breach hereof.

d. This Agreement does not and shall not be construed to create a partnership or joint venture between the parties hereto.

e. This Agreement shall be construed in accordance with the laws of the State of _____ governing contracts wholly executed and performed therein, and the parties hereto agree to submit to the jurisdiction of the Courts of the State of _____ and that service of process may be made by certified mail in lieu of personal service thereof.

f. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, executors, administrators and successors.

g. In the event any provision hereof shall be for any reason illegal or unenforceable, the same shall not affect the validity or enforceability of the remaining provisions hereof.

h. Any and all notices, statements, requests, demands and other communications required or permitted to be given by this Agreement shall be in writing and shall conclusively be deemed to have been given if personally delivered to, or if enclosed in a stamped and sealed envelope, and mailed by registered or certified mail in the United States Mails addressed to the party to whom it is authorized to be given at the address first set forth above or at such other places as the parties shall designate in writing by certified or registered mail.

IN WITNESS WHEREOF, the parties hereto have executed this Shopping Agreement the day and year first above written.

ARTIST:

[Client(s) Name]

COUNSEL:

[FIRM NAME]

By _____
[Attorney Name]

FORM IV

**CONFLICTS OF INTEREST WAIVER -MULTIPLE AND EXISTING (NOT FORMER)
CLIENTS - SINGLE TRANSACTION**

_____, 20____
[Client #1 name] [Client #2 name]
[address] [address]

Re: **[Matter Description]**

Dear _____ and _____:

Because we have been asked to represent both of you in this transaction, and because we have represented both of you in previous separate and unrelated transactions, we ask you to acknowledge that we have consulted with both of you on the implications of our common representation in the above-referenced transaction and the advantages and risks involved. Accordingly, you both believe that the advantages of entering this transaction out-weigh the risks and, by signing below, you waive any conflict of interest. You both acknowledge that you have been advised by us to seek separate counsel if you wish, but that you both have chosen not to do so.

Please sign three copies of this letter where indicated and return them to this office. If you have any further questions or concerns, please do not hesitate to contact me.

Very truly yours,

[FIRM NAME]

By _____
[Attorney Name]

enclosures

Agreed and Accepted.

Dated: _____, 20____

[Client #1 signature]

Dated: _____, 20____

[Client #2 signature]

FORM V

MUSIC MANAGEMENT AGREEMENT

THIS AGREEMENT is made as of _____, 20__ by and between [**Manager's Name**] ("Manager"), whose address is _____ and [**Artist Member #1**], [**Artist Member #2**], professionally known as [**Name of band**"], whose address is _____ (collectively referred to as "Artist").

WHEREAS, Artist desires to engage Manager to represent Artist and to render services to Artist as Artist's sole and exclusive personal manager, representative and advisor, throughout the world in all of Artist's affairs in the field of entertainment; and

WHEREAS, Manager desires to act in such capacity and to accept such engagement;

NOW, THEREFORE, in consideration of the premises and mutual promises contained herein, and for other good and valuable consideration, the parties agree as follows:

1. Services.

A. Artist engages Manager to be the exclusive personal manager, representative and advisor, throughout the world, of Artist (and any company or corporation formed, owned or controlled, directly or indirectly, by Artist) in all facets of Artist's careers in the field of entertainment. Without limiting the foregoing, Manager will be Artist's exclusive representative for negotiating the terms governing the disposition, use, employment, promotion, and exploitation of Artist's talent as performing artist, recording artist, songwriter, composer, producer, actor, writer, director, packager or otherwise.

B. Manager accepts such engagement and agrees to advise and counsel Artist regarding Artist's careers in the entertainment field and to use its best reasonable efforts to promote, develop and advance Artist's careers.

C. Notwithstanding anything to the contrary contained herein, it is specifically understood and agreed that Manager is not licensed as a theatrical, artist's or talent agency and Artist acknowledges that Manager has not offered, attempted or promised to obtain or provide information for obtaining employment or engagements for Artist or to perform such services or any services which shall require a professional license, and that Manager is not permitted, obligated authorized or expected to do so. During the Term of this Agreement, after consultation with Manager, Artist shall engage reputable licensed booking and theatrical agents or other employment agencies in order to obtain engagements and other employment for Artist. Any compensation required to be paid to such agents or agencies shall be at Artist's sole cost and expense. Artist shall submit all offers of employment to Manager and will refer any inquiries concerning or seeking Artist's services to Manager.

D. It is expressly understood and agreed that Manager may be engaged in other business activities and may represent other artists and that Manager will not be required to devote its full time and interest to representation of Artist.

2. **Term.** [One year short - seven years is long. Extensions can be based on minimum income achievements annually or securing a record deal, or other indicia of progress] The initial term ("Initial Term") of this Agreement will be three (3) years from the date first above written. Manager will have the right to extend the Initial Term for two (2) consecutive one (1) year option periods (the "Option Periods"). Unless Manager gives Artist written notice of Manager's intention not to exercise an option period option at least 30 days prior to the expiration of the then-current Option Period, the option will be automatically exercised and applicable Option Period will commence immediately upon conclusion of the preceding Initial Term or Option Period (as applicable). The Initial Term and the exercised Option Periods are collectively referred to hereinafter as the "Term."

3. **Compensation.** In consideration of Manager's services, Artist agrees as follows:

A. Artist will pay Manager or cause Manager to be paid a "commission" to equal **[10% to 25% with 15% to 20% most common]** when received by Artist or on Artist's behalf, on Gross Income (as such term is hereinafter defined) received, credited or recovered (based upon claims asserted by Artist) by or on behalf of Artist during the Term of this Agreement.

B. For the purposes of this Agreement, "Gross Income" will include all forms of income, consideration and compensation relating to Artist's endeavors in the entertainment business, including, without limitation, salaries, advances, earnings, fees, royalties, partnership interests, shares of stock, bonuses, shares of profits, recording funds, tour support received from record companies, gifts, income in kind, and other considerations of any kind or nature whatsoever earned or received directly or indirectly by Artist, individually or as a member of a group or by any party or entity on Artist's behalf or by any party or entity which has furnished Artist's services in connection with the following endeavors, motion pictures, television, radio, music, **[music publishing - often a negotiated item, generally included unless value and career as writer is already established]**, literary, theatrical, engagements, personal appearances, public appearances in places of amusement and entertainment, records and recordings, publications and the use of Artist's name, likeness and talents for purposes of advertising and trade. Gross Income will also include recoveries of claims for damages (whether by judgment, settlement or decree but net of actual costs and expenses, including reasonable attorney's fees, paid by Artist in respect of such judgment, settlement or decree, but specifically excluding punitive damages) from entertainment-related claims, or any other kind or type of income recovered (based upon claims asserted by or on behalf of Artist) or otherwise received or credited at any time during the Term hereof by Artist or any of Artist's heirs, executors, administrators, assigns, or any person, firm or corporation (including Manager) on Artist's behalf and which is related to Artist's career in the entertainment business. Notwithstanding the foregoing, Gross Income shall not include and Manager will not be entitled to Commission on Gross Income received by Artist in connection with:

i. Sums actually paid to unrelated third parties for recording costs (excluding

advances and amounts paid to Artist for Artist's services in connection with such recording) including, without limitation, record producers' fees and royalties (as those terms are commonly understood in the music industry) actually paid by Artist or on Artist's behalf to such record producers.

- ii. Sums actually paid to unrelated third parties for video production costs and television production costs (excluding amounts paid to Artist for Artist's services in connection with such video production).
- iii. Sums actually paid to unrelated third parties for tour support including without limitation, sound and light expenses, transportation, and equipment rental.
- iv. Monies paid by Artist or charged to Artist for opening acts (other than Artist) in connection with appearances or tours performed by Artist.
- v. Sums received from corporate sponsorships which are actually paid to unrelated third parties for expenses such as tour support, video production, and in kind contributions from third parties such as equipment, clothing and products.
- vi. Union or guild pension, health or welfare contributions paid to or made on behalf of Artist.

C. Manager's Commission will be payable upon all Gross Income as and when such Gross Income is received by Artist or by any third party on Artist's behalf during the Term and thereafter.

D. After the expiration of this Agreement, Manager will receive the Commission with respect to all engagements and agreements entered into or substantially negotiated during the Term ("Post Term Earnings") as follows: **[this is called the a "Sunset provision" - 1 year is short; 4 years is long depending on the reasonable pay-off period for developing an artist's income. The commission descends annually to enable the transition of another manager at an increasing commission.]**

- (i) first year and each successive year – commission less 5%; and
- (ii) thereafter Artist shall not be obligated to pay Manager any compensation.

E. For all Gross Income, the determination as to whether the Gross Income is subject to commission under this Agreement will be made as of the date such Gross Income, including, without limitation, record royalties, are earned by the Artist.

F. Except as specified herein, no expense, cost or disbursement incurred in connection with receipt of Gross Income, including, without limitation, salaries, professional fees and booking agency fees will be deducted therefrom prior to calculation of Commission.

G. In the event that Artist conducts business or forms a corporation during the Term of this Agreement for the purpose of furnishing and exploiting Artist's artistic talents, Manager shall have the irrevocable option, exercisable within ninety (90) days after the date it receives written notice of such event, to enter into a management contract with such business or corporation identical in all respects to this Agreement (except as to the parties thereto and the commencement date of the term of such contract) subject to the following:

- i. If Manager exercises such option within such ninety (90) day period, then the gross earnings of such business or corporation derived in whole or in part from Artist's services, prior to the deduction of any corporate income or other taxes and of any corporate costs or expenses or other deductions, shall be included as part of Gross Income; provided, that the subsequent distribution(s) of such monies to Artist (as salary, dividends or otherwise) shall not be commissionable by Manager hereunder and said distribution(s) shall be excluded from Gross Income for the purpose of calculating the compensation due to Manager hereunder.
- ii. In the event that Manager fails to exercise such option within such ninety (90) day period, then the gross earnings of such business or corporation derived in whole or in part from Artist's services, prior to deduction of any corporate income or other taxes and any other corporate costs or expenses or deductions shall be excluded from Artist's Gross Income, and such salary, dividends, or other distributions of profits and other financial benefits such as retirement plans as may be paid to Artist by such business or corporation shall be included as part of Artist's Gross Income.

H. Manager shall receive that portion of Gross Income (including, without limitation, Post-Term Earnings) of Artist as to which Manager is entitled hereunder within thirty (30) days after the end of the month in which Artist receives such Gross Income.

I. Artist agrees that all Gross Income as herein defined shall be paid by all persons, firms or corporations directly to a business manager chosen by Artist following consultation with Manager (the "Business Manager"). Artist agrees and does hereby direct (for as long as Manager fulfills the material terms and conditions of this Agreement) the Business Manager (i) to hold Manager's share of such Gross Income in trust pending payment thereof to Manager, and (ii) to pay Manager its share of Gross Income when due. If requested by Manager, Artist agrees to direct the Business Manager to segregate all Gross Income of Artist received by Artist into two separate accounts, one such account being for Artist's share of such Gross Income, and the other account being for Manager's share thereof, and in such event the Business Manager shall keep separate and not commingle Manager's share of such Gross Income with any other monies held by or due the Business Manager in connection with any other artist or business. Furthermore, if requested by Manager, Artist agrees to execute a letter of direction which will be irrevocable so long as Manager fulfills the material terms and conditions of this Agreement, to each and every Business Manager employed by Artist in a form reasonably acceptable to Manager to the above effect. If Artist

nevertheless receives Gross Income directly, Artist shall segregate and shall be deemed to hold in trust. In the event that Manager receives Artist's share of Gross Income directly, Manager shall segregate and shall be deemed to hold in trust for Artist, the amount representing such Artist's share of such Gross Income, less and any disbursements incurred by Manager on behalf of Artist.

J. Artist will reimburse Manager for any and all bona fide expenditures incurred by Manager on Artist's behalf or in connection with Artist's career or in the performance of Manager's services hereunder; provided, however, that Artist will not be responsible for any portion of Manager's overhead expenses, with the exception of long distance telephone calls, postage costs, costs of messengers and couriers, cassette duplication, telefax costs, and Xeroxing costs directly attributable to Artist. It is agreed and understood that Artist will be responsible for all booking agency fees and commissions, union dues, publicity and promotion costs, legal fees and accounting fees and any and all taxes due with respect to Gross Income. If Manager advances any fees, costs or expenses on Artist's behalf, which Manager is not required to do, Artist will reimburse Manager for such advances within thirty (30) days of Manager's payment and/or in the event Manager does not take or withhold its Commission from Gross Income for any reason, such amounts will be deemed a loan from Manager to Artist. Artist hereby authorizes and empowers Manager to deduct the amount of any such loans and advances from any sums received by Manager for Artist's account. Artist agrees to pay Manager interest on the unpaid balance of such loan in the amount of **[twelve percent (12%) per annum]** or highest legal rate whichever is less.

K. Artist and Manager will each have the right to inspect and audit each other's books and records as the same pertain to this Agreement. The aforementioned audits and/or public inspections, if any, will be conducted by certified public accountants upon reasonable notice and each party will notify the other as and when such party intends to conduct such audit and/or inspection.

4. Books and Records; Disputes Regarding Gross Income.

A. Each of the parties hereto shall keep or cause to be kept in the United States of America accurate, full and complete books of account and records (which books and records may be original or a copy) with respect to all amounts received and other transactions entered into in connection with Artist's professional career during the Term of this Agreement and for so long thereafter as Artist receives any Gross Income to which Manager is entitled hereunder, which books and records may be inspected by the other party, at such party's expense, at the location at which they are kept during regular business hours by a certified public or chartered accountant designated by the party seeing such inspection upon reasonable written notice to the other party. Each party shall render to the other party within thirty (30) days following the expiration of each calendar month during the Term hereof and for so long thereafter as Artist receives any Gross Income to which Manager is entitled hereunder, a written statement of account (an "Accounting Statement") showing the Gross Income of Artist received by Artist during the preceding month and the Expenses (if any) incurred by Manager hereunder. The rendering of each such Accounting Statement shall be accompanied by payment to Artist or Manager, as the case may be, of the amount shown

thereby to be due to Manager or Artist.

B. If a dispute arises between Artist and Manager regarding the amount of Gross Income of Artist and/or to which Manager is entitled hereunder, Artist and Manager shall cause mutually agreed upon certified public accountants (or if they fail to agree within ten (10) days, a third accountant chosen by the parties' respective accountants or if their accountants are unable to agree, a third accountant chosen by The American Arbitration Association) (the "accountants") to review the books and records. Promptly after notification from the parties of a dispute, the accountants shall conduct their review of the parties' books and records and shall deliver an Accounting of Artist received by Artist during the relevant period covering the dispute and the Expenses (if any) incurred by Manager. The accountants' determination of the Gross Income of Artist and/or to which Manager is entitled hereunder shall be binding and conclusive on the parties. The party hereto initiating the review of books and records pursuant to this subparagraph 10(b) shall pay the fees, costs and expenses of the respective accountants. Any amount payable by either party to the other as a result of such review shall be paid within fifteen (15) days of receipt of the Accounting Statement prepared by the accountants.

5. Power of Attorney. Artist hereby irrevocably appoints Manager as Artist's true and lawful attorney-in-fact for the Term of this Agreement to sign, make, execute and deliver in the name of Artist any and all contracts relating solely to Artist's personal appearances; provided, however, that Manager shall have obtained Artist's approval of such proposed personal appearance prior to executing any agreement in respect of same, and provided further that no such personal appearance contract shall bind Artist for a period in excess of three (3) days. Artist gives to Manager as Artist's attorney-in-fact, full power and authority to do and perform all and every act and thing necessary to be done for the purposes set forth in this Paragraph 5 as fully as Artist might or could do if personally present and ratifies and confirms all that Manager shall lawfully do or cause to be done by virtue of the grant of such power. Telephoned consent shall be acceptable in certain instances where time would not permit Manager to receive Artist's written consent. Manager will provide Artist with copies of all agreements Manager executes on Artist's behalf.
6. Neither Artist nor Manager will have the right to assign this Agreement or any rights or obligations hereunder without the express written consent of the other, except that Manager may assign this Agreement without Artist's consent to any firm, corporation or other entity of which Manager is an officer, partner, employee or consultant and Manager remains personally responsible for the supervision of Artist's career on a day-to-day basis. Each member of Artist is hereby jointly and severally liable for all agreements, representations, warranties, and undertakings specified in this Agreement. The substitution of any individual or individuals for any of the individual signatories to this Agreement (and any substitutes therefor), and the adding or subtracting from the original number of individuals comprising Artist hereunder shall be done only after consultation with Manager. Artist shall give Manager written notice if during the Term of this Agreement any member of Artist leaves Artist, if any individual is added to Artist or if Artist disbands.

7. Each party warrants and represents that they are free to enter into and to perform under this Agreement and is not a party to any presently existing contract which would interfere with Artist's full performance of the terms and conditions of this Agreement. Artist represents and warrants that no portion of any Gross Income which may become payable to Artist during the Term of this Agreement on account of a property created by Artist in whole or in part prior to or during the Term hereof will be encumbered so as to adversely affect or reduce Manager's compensation hereunder. The Artist and Manager (the "Indemnifying Party") agrees to indemnify and hold the other harmless against any and all losses, damages (consequential or otherwise), costs, expenses or fees (including reasonable attorneys' fees) incurred by the party seeking indemnification in any claim, suit or proceeding instituted by a third party against such party seeking indemnification in which any assertion is made which is inconsistent with any warranty, representation or covenant made in this Agreement by the Indemnifying Party; provided, that the foregoing indemnity shall be limited to claims which are reduced to final judgment or which are settled with the prior consent of the Indemnifying Party concerned. The Indemnifying Party shall control the defense of any such claim, suit or proceeding, provided that the other party hereto may, at its sole cost and expense, participate in the defense thereof with counsel of its own choosing.
8. Artist hereby acknowledges that Artist's services hereunder are unique and extraordinary, and that the loss thereof cannot be adequately compensated in damages. Artist agrees that Manager will be entitled to seek injunctive relief against Artist and any third party to enforce the provisions of this Agreement, and to prevent any breach thereof by Artist or such third party.
9. All notices hereunder will be in writing and will be given by mail in the United States mail, postage pre-paid or by telegraph with all charges pre-paid at the addresses first indicated above, or such other address as either Artist or Manager may designate by notice to the other and date of such mailing or telegraphing will be the time of the giving of notice. A copy of all notices to Manager will concurrently be addressed to: **[Attorney Name], [Firm Name], [Firm Address]**.
10. This Agreement may not be terminated by reason of either party's breach of this Agreement unless the party alleging such breach has notified the other party in writing concerning the nature of the breach and the alleged breaching party has failed to cure such breach within twenty (20) business days of his receipt of such written notice.
11. This Agreement sets forth the entire understanding between the parties with respect to the subject matter thereof, and no modification, amendment, waiver, termination or discharge of this Agreement or any provisions thereof will be binding upon either party unless confirmed by a written instrument signed by Manager and Artist. No waiver of any provision of, or default under this Agreement will affect either party's rights thereafter to enforce such provision or to exercise any right or remedy in the event of any other default whether or not similar. This Agreement shall be binding upon and enure to the benefit of the parties' respective heirs, executors, administrators, successors, and permitted assigns. This Agreement may not be assigned by Artist except upon the prior written consent of the Manager. Manager may assign this Agreement to any person, firm or corporation acquiring

all or substantially all of the assets or stock of Manager; provided, however, that such assignment shall not relieve Manager of its obligations hereunder. This Agreement does not and shall not be construed to create a partnership or joint venture between the parties hereto. This Agreement is governed by the laws of the State of _____. The parties agree to submit to the jurisdiction of the courts of the State of _____. In the event any provision of this Agreement is determined to be illegal or unenforceable, the same will not affect the validity or enforceability of the remaining provisions of this Agreement.

IN WITNESS WHEREOF, Artist and Manager have caused this Agreement to be executed as of the date first indicated above.

Artist

Manager

[Member Name #1]

[Manager's Name]

[Member Name #2]

FORM VI

LEGAL SERVICES FOR MUSIC INCLUDING MANAGEMENT FUNCTIONS

[FIRM NAME]

ENGAGEMENT LETTER OF AGREEMENT

Effective as of _____

[Client Name]

[Address]

Re: ENGAGEMENT LETTER OF AGREEMENT

Dear [Client]:

We are delighted to continue to work with you toward advancing your career. We appreciate your trust and confidence as your general legal counsel related to your entertainment career (“Services”). “You” or “your” herein refers to _____ or any entity subsequently formed, owned or controlled by you for the purpose of providing or exploiting your talent and services in the Entertainment and Literary Fields (defined in paragraph 2.(c)). Our engagement will be covered by the terms of this Engagement Letter of Agreement (“Agreement”) unless we mutually, in writing, provide otherwise.

The provisions of this Agreement, take into consideration the unpaid time we have willingly speculated and our payment of various expenses on your behalf. We have also discussed the work and risk we have undertaken in our representation of you to date and the results secured on your behalf which include shopping for recording and publishing contracts. We believe in your talent and abilities. You and we believe the compensation arrangement in this Agreement is fair and reasonable. We want to assist you to develop your career in the Entertainment and Literary Fields.

By entering this Agreement, we are replacing our prior agreement dated _____.

1. Term. “Term” of this Agreement shall mean that period of time commencing as of

_____, 2002 and continuing until the effective date that this Agreement is terminated in writing by either you or us. However, if this Agreement is terminated by either of us on or prior to _____, 2007, "Term", for the purpose of determining the Contingent Fee and/or Post-Contingent Fee (as provided in paragraphs 4. and 5.) due us shall mean that period commencing _____, 2002 and ending _____, 2007.

2. Scope of Services Provided.

(a) We will serve as your general counsel on legal and business affairs which shall generally include negotiating contracts, drafting contracts and giving general legal advice in the Entertainment and Literary Fields. Such general counsel shall be given in the following matters: intellectual property (including trademark and copyright filings); shopping and securing music recording, publishing and distribution contracts (which decision to enter shall be in your sole judgment and discretion); the formation or maintenance of corporations or partnerships, pension or profit sharing plans; corporate; labor; and advise on specific opportunities related to the development of your entertainment career in a fashion similar to those a personal manager might provide. _____ will be your primary lawyer. We shall be directly accountable to you.

(b) At your request, we will provide or find someone to provide, if we agree at the time of your request, legal or professional advice, counseling or services for matters not provided in paragraph 2.(a) which matters include, but may not be limited to, securities, investments, money management, tax, litigation and arbitration. For these services, you agree to pay us on an hourly basis for the time we devote to such matters, together with any of our out of pocket costs ("Hourly Fee"). The Contingent Fee does not include these Hourly Fee services nor does it include rendering advice or performing services in states, countries or jurisdictions in which it is required that we are licensed and in which we are not licensed to practice law. We are currently admitted to practice law in the State of _____ and in various courts of the United States. Our billing rates are adjusted from time to time, customarily once a calendar year. Prior to undertaking any matter for an Hourly Fee or at any time you request, we shall advise you of the current hourly billing rates of any attorneys. We would expect from time to time to employ or engage other lawyers on your behalf, and upon your approval, whose fees for services and related costs you shall be responsible. Our minimum billing increment on hourly matters is currently one-quarter of one hour.

(c) "Entertainment and Literary Fields" shall mean and include any and all branches of the entertainment, fields now existing or hereafter developed, direct or ancillary, including, but not limited to, all forms of music recording, music writing/publishing, live musical performances/touring, merchandising, personal appearances, personal endorsements, radio, voice work, acting, modeling, dance, choreography, live theater, visual arts, electrical transcriptions, books and printed material, motion pictures, worldwide television, videodiscs and videocassettes and all forms of transmissions and licensing thereof.

3. Representation at Will and Termination. It is intended that this Agreement shall run for an indefinite term with the right of either party to terminate this Agreement, at anytime, upon notice in writing, subject to your obligation to pay us fees as set forth in paragraphs 4. and 5. If

either party terminates this Agreement, you agree to pay us (a) any undisputed Hourly Fees and related costs and expenses, as provided in paragraph 7., due through the date of termination; (b) the Contingent Fees; (c) the Post-Term Contingency Fee; (d) any costs incurred in connection with the transition to a successor attorney or personal manager; and (e) if you request and we agree, Hourly Fees or applicable Contingency Fees payable through whatever project or assignment you want us to complete. Unless you and we otherwise agree in writing, we shall have no obligation to retain your files beyond one year after our services conclude.

4. Contingent Fees.

(a) During the Term, you agree to pay a "Contingent Fee" to us in an amount equal to twenty percent (20%) of all Gross Monies earned and/or actually received by or on your behalf from your activities in the Entertainment and Literary Fields. The term "Gross Monies" shall mean and include:

(i) All money (subject to the exclusions of paragraph 4.b)) which you actually earn and/or receive as a result of all of your activities in and throughout the Entertainment and Literary Fields.

(ii) All salaries, earnings, fees, royalties, bonuses, shares of profit and other participation, shares of stock, partnership interests and percentages earned and/or received directly or indirectly by you or your heirs, executors, administrators or assigns, or by any other person, firm or corporation on your behalf.

(iii) All payments for termination of a contract or employment.

(iv) Any monies or property recovered in connection with any litigation or arbitration pertaining to the Entertainment and Literary Fields which are payable to you directly or to any person on your behalf, less any costs and expenses paid by you in connection with any such recovery, including, without limitation, court costs and reasonable attorney's fees.

(v) Stock, or the right to buy stock in any third-party corporation, earned and received as all or part of your compensation for activities in the Entertainment and Literary Fields. In the event you become the packager or owner of all or part of an entertainment property, whether as individual proprietor, stockholder, partner, joint venture or otherwise, we shall be entitled to our percentage share thereof. Should you be required to make any payment for such interest, we will pay our percentage share of such payment, unless we elect not to in which case such election shall be deemed a waiver by us of our percentage share of such interest and profits therefrom.

(b) Notwithstanding any of the foregoing, the term Gross Monies shall not include monies actually paid by or credited against the account of you or on your behalf:

(i) to any third party for actual recording costs of master recordings embodying your performances except that with respect to advances to you as so

called “artist personal advances”, “recording budget advances” and/or “recording fund advances” related to the recordings up to and including any first album under the terms of a recording contract, we shall be paid no less than 10% of Gross Monies from such advances.

(ii) to third party producers, directors, engineers or mixers for such third party's services in connection with the production of phonograph recordings or videos embodying Artist's performances as a featured recording artist;

(iii) to a third party writer, co-writer, co-author and/or co-publisher of a musical composition with whom you may collaborate;

(iv) to third parties for independent promotion, marketing or publicity costs;

(v) for production costs incurred in connection with the filming, taping or other permanent fixation of audio-visual reproductions (including, without limitation, promotional music videos) of Artist's performances;

(vi) from your record company as so-called “deficit tour support” (which shall be defined as monies received by you from your record company, including per diems, which are actually used to offset a deficit incurred by you in connection with any personal appearance concert or promotional tour, but only to the extent the reasonable out-of-pocket expenses incurred by you in connection with the applicable tour exceed the amount of monies received by or on behalf of you in connection therewith);

(vii) for your costs incurred for so called “sound and light” facilities and equipment as a result of your concert or other appearances;

(viii) for your costs incurred for opening acts and support acts employed or retained by you to appear before, with or after you at concert or other personal appearances;

(ix) other consideration earned or received by you from passive investments (i.e., investments in or loans to any projects or properties);

(x) monies earned from sources where you render no services to the Entertainment and Literary Fields; and

(xi) reasonable costs incurred in connection with the collection of Gross Monies, including, without limitation, reasonable attorney's fees.

(c) Our Contingent Fees shall be payable only when Gross Monies are received by or credited to you. Gross Monies shall be deemed to have been received by you and you shall immediately pay or cause us to be paid our Contingent Fees thereon, if such Gross

Monies are received, directly or indirectly, by you or by any other party or entity on or for your behalf, or by any party or entity which furnished your services.

5. Post-Term Contingency Fee. In addition to the amounts payable to us as set forth in paragraph 4., you agree to pay us “Post-Term Contingency Fees” as follows:

(a) Term Products and Services. With respect to Gross Monies earned by you following _____, 2007, solely to the extent such Gross Monies are derived from the exploitation of products, or services related to the Entertainment and Literary Fields which were substantially created or rendered during the Term, under contracts entered into during the Term, you shall pay us the following percentages of our Contingent Fees: One hundred percent (100%) for ten (10) years for the period commencing upon the last date after the Term hereof (“First Post-Term Period”); and fifty percent (50%) for the period thereafter in perpetuity (“Second Post-Term Period”).

(b) Post-Term Products and Services. With respect to Gross Monies earned by you following September 30, 2007, solely to the extent that such Gross Monies are derived from the exploitation of products and services related to the Entertainment and Literary Fields which were created or rendered after the Term but under contracts entered into during the Term, you shall pay us the following percentages of our Contingency Fees: Fifty percent (50%) for the First Post-Term Period and twenty-five percent (25%) for the Second Post-Term Period.

6. Engagement of a Third Party Personal Manager and Fees. In the event you or we request the engagement of a third party personal manager (“Manager”), we shall assist with the search and selection process of the Manager. You shall have the final decision on the selection of the Manager. The Manager shall be engaged on compensation and engagement terms no more favorable than those applicable to us as set forth in this Agreement or any subsequent engagement agreement between us and you. If a Manager is engaged, our Contingent Fee shall be reduced, but not below ten percent (10%), as provided and calculated in paragraph 4.(a), as further subject to the inclusions and exclusions of Gross Monies and related calculations, to be reduced pro-rata as provided in paragraphs 4. and 5.

7. Costs Advanced. In addition to the Hourly Fees, Contingent Fees, and Post-Term Contingency Fee, you shall be responsible for advancing or reimbursing us for costs and expenses we incur on your behalf. Such costs and expenses will be billed to you and will include photocopy charges (20¢ per page), computerized legal research, staff overtime if required to meet deadlines imposed by you, travel expenses, filing fees, registration fees for copyrights and trademarks, messenger fees, long-distance telephone charges, outgoing and incoming fax (50¢ per page), Federal Express or overnight delivery charges, secretarial overtime which is due to special needs of your matter, and miscellaneous expenses. To the extent we advance those costs on your behalf, you agree to reimburse us for them; and from time to time we may request that you make an advance payment for an unusual cost item. We will get your prior permission before incurring large client cost disbursements. No single expense of \$100 or more will be expended without your prior consent.

8. Billing Logistics, Collection of Fees and Audit Rights.

(a) We typically bill our Hourly Fees on a monthly basis. Payment is due upon receipt of the invoice. A Statement of Account will be forwarded to you automatically each month if you have any outstanding invoices. *[Law firm]*, like other businesses, requires accounts to be paid promptly. Regardless of how your payment is designated to be applied, all payments received will first be applied against accrued late payment charges, then to costs or expenses advanced or incurred, and last to fees. We add a late payment charge to accounts not paid within thirty days of the invoice date. The late payment charge is currently assessed at a rate of 1% per month on any unpaid balance for corporations and .66% per month for individuals or, if less, the maximum legal rate. In the event that an account becomes delinquent, the firm employs prudent collection procedures and the firm may discontinue representation. If an account goes unpaid for 120 days after the services are rendered, the account is referred to an attorney for collection. You also agree to pay all costs incurred by this firm in collecting on your delinquent account, including reasonable attorneys' fees.

(b) Our Contingent Fees and Post-Term Contingency Fees are payable immediately upon payment to you of Gross Monies to which such fees pertain. In that regard, we may include in any agreement which we negotiate on your behalf, as to which Contingent Fees and/or Post-Term Contingency Fees apply, a provision irrevocably requiring the remitter to directly pay to us the Contingent Fees on your behalf simultaneously with payment to you of Gross Compensation. You shall render an accounting to us within fifteen (15) days of the end of each month, and with each payment you make to us showing the basis of such payment.

(c) We, our accountants, attorneys or agents shall have the right to review your determination or calculation of Gross Monies and the financial figures supporting the computation of your payments from Gross Monies and any and all other relevant or supporting documents on which any Contingent Fee or Post-Term Contingency Fee due us was or could be made. These shall include all tax returns, bank records and individual tax returns of shareholders or board members. In the reports presented to us from you, you shall explain the basis for the computation of Contingent Fees. If we shall so request, we shall be given the opportunity, upon reasonable advance written notice, and in a manner calculated to provide the least disruption to your business operations, review and audit the underlying figures giving rise to the Contingent Fee computations. Any such audit shall be conducted at our sole expense, except that, if the audit discloses that Contingent Fees paid to us were understated by an amount in excess of 10% for any period reviewed, then you shall reimburse us for the reasonable expense of such audit.

9. Staffing/Key Person. _____ shall be the principal lawyer responsible for your matters. To properly staff your matters and to control your costs, we may utilize the services of other attorneys and personnel employed by or associated with this firm when appropriate.

10. Estimates and Engagement Retainer. At your request, from time to time, we would be happy to estimate our anticipated Hourly Fees on particular matters not covered by the Contingent Fee arrangement, but we cannot warrant that our estimates will be met, since legal costs

cannot be predicted and are subject to many variables which neither we, nor you, can control.

11. Avoiding Disappointed Expectations and Resolving Disputes. We want to serve you well. We believe that the best way to avoid disappointments and misunderstandings is for there to be frequent and open communication between us. You understand that we make no promises or guarantees about the outcome of any matter. If a dispute between us should arise, we want to settle it quickly and fairly. We will try to do so through discussion. If we are not successful in doing so, then both parties agree to settle any dispute arising between us by prompt, confidential and binding arbitration under the auspices and pursuant to the rules of the American Arbitration Association in [city, state].

12. Conflicts of Interest. You understand that we represent other parties in the field of entertainment. We may have certain ownership or participation interests in entertainment ventures. From time to time, conflicts of interest may arise between you and other clients of the firm. If a conflict arises of which we are aware we shall promptly advise you and we will try to assist in resolving such conflicts. If such conflict cannot be overcome, we will have the right to represent you, to represent others, or to withdraw completely. In any such case, it may be necessary for you to engage separate counsel.

13. Agency. It is specifically understood and agreed that we are not licensed as a theatrical talent agency. You acknowledge that we have not offered, attempted or promised to obtain or provide information for obtaining employment for personal appearance engagements (“Engagements”) for you or to perform such services or any services which require a theatrical talent agency license. We are not permitted, obligated authorized or expected to act as your theatrical talent agent. You shall engage reputable licensed booking and theatrical agents or other employment agencies in order to obtain Engagements and other employment for you. Any compensation required to be paid to such agents or agencies shall be at your sole cost and expense. You shall submit all offers of employment for Engagements to us and will refer any inquiries concerning or seeking your services to your appointed theatrical talent agency.

14. Miscellaneous Provision. This Agreement represents the entire agreement between the parties and supersedes all prior agreements with respect thereto between the parties hereto and any of them. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives. This Agreement shall be subject to and governed by the laws of the State of _____ and all questions concerning the meaning and intention of the terms of this Agreement and concerning the validity hereof and questions relating to the performance hereunder shall be adjudged and resolved in accordance with the laws of said state. Whenever possible, each provision of this Agreement and each related document shall be interpreted in such manner as to be effective and valid under applicable law. If any provision of this Agreement or any related document shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement or such related documents. This Agreement may not be and shall not be deemed or construed to be modified, amended, rescinded, cancelled or waived in whole or in part except by written instrument signed by the parties hereto.

15. Signing. If you agree, sign and return. Please indicate your approval and agreement to the scope and terms of our engagement by executing the enclosed copy of this letter and returning it to me. If you have any questions, please call me.

16. Independent Counsel. We hereby advise you to seek outside counsel in connection with this Agreement and your execution hereof. We cannot represent you in connection with this Agreement or any engagement agreement with us and we give you no advice.

We look forward to working with you. If this Engagement Letter of Agreement is acceptable, please sign where indicated below.

Yours very truly,

[FIRM NAME]

By
[Attorney]

Approved and agreed.

[Client Name]

KENNETH J. ABDO is a senior shareholder and Vice President of Lommen, Abdo, Cole King & Stageberg, P.A., Minneapolis, Minnesota where he practices entertainment law full time. He is a past Chair of the American Bar Association's Forum on the Entertainment & Sports Industries. He was an Adjunct Professor of Entertainment Law at William Mitchell College of Law, St. Paul, Minnesota, for eleven years. Mr. Abdo is a voting member, Chicago Chapter Governor and past Chair of the Entertainment Law Initiative (ELI) of the National Academy of Recording Arts and Sciences (The Recording Academy®). He is a published author and national lecturer. He is a co-writer of the standard law school textbook "The Law and Business of the Entertainment Industries" (Don Biederman, et al./Praeger). The firm's clients include Grammy®, Oscar®, Emmy®, Spirit® and Peabody® Award winners. Research assistance for this article was provided by Timothy C. Matson, Esq. and Melissa Biederman, Esq. He can be contacted at Lommen, Abdo, Cole, King & Stageberg, P.A., 2000 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402; 612-336-9316; Fax: 612-339-8131; E-mail: ken@lommen.com.

JACK P. SAHL is a professor at the University of Akron School of Law, Akron, Ohio where he teaches Professional Responsibility and Entertainment Law. He also often consults on entertainment and professional responsibility matters. Before becoming a law professor, he worked full time in the music industry. Professor Sahl regularly lectures on professional responsibility in the United States and abroad. He is a member of the publications Board of the American Bar Association's Center for Professional Responsibility and the Ohio State Bar Association's Legal Ethics and Professional Conduct Committee. Professor Sahl is also the Deputy Director of the Miller Institute of Professional Responsibility, a research center studying lawyer and judicial conduct.

BOB DONNELLY'S law practice covers the full gamut of the entertainment spectrum from television (Lifestyles of the Rich and Famous) to commercials (Diet Pepsi) to record labels (UFO) to music publishing (Cherry Lane) to internet business (Priceline.com) to licensing (Gloria Vanderbilt), and to theater (Beatlemania). Mr. Donnelly is probably best known for having brought a case with the New York State Attorney General which resulted in major labels having to pay artists \$55 million dollars in back royalties. Mr. Donnelly also settled the largest case in world music on behalf of his Irish music clients Atlan, Eileen Ivers, Mick Moloney and Cherish the Ladies. He is admitted in New York. He can be contacted at Lommen, Abdo, Cole, King & Stageberg, P.A., 2000 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402; 212-683-8775; Fax: 212-414-0525; E-mail: bobdonnelly@lommen.com.

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BARRY O'NEIL'S practice involves the resolution of commercial disputes, including entertainment contract and intellectual property matters; liability claims; employment-related issues and insurance claims. Mr. O'Neil works with artists as well as small and medium size companies to make wise business choices in the area of litigation. Mr. O'Neil has been included in the Super Lawyers® list by Minnesota Law & Politics and is AV rated by Martindale-Hubbell. He can be contacted at Lommen, Abdo, Cole, King & Stageberg, P.A., 2000 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402; 612-336-9342; Fax: 612-339-8064; E-mail: barry@lommen.com.

LEE HUTTON has a burgeoning sports entertainment and advertising law practice. Mr. Hutton represents athletes in player and entertainment contract negotiations, as well as organizing instructional camps for his sports clientele. In addition, he currently serves as a member of several community boards in the Twin Cities area. He has repeatedly been on the Rising Star list by Minnesota Law & Politics, a 2008 Up & Coming Attorney by Minnesota Lawyer and received a 40 Under Forty award from the Minneapolis/St. Paul Business Journal. He can be contacted at Lommen, Abdo, Cole, King & Stageberg, P.A., 2000 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402; 612-336-9301; Fax: 612-339-8131; E-mail: lee@lommen.com.