



Agents, Managers, and Attorneys: The Representative's Role

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The roles and responsibilities of the individuals and agencies that may be involved in an artist's career can become complex and confusing. An artist whose career is just beginning might be intimidated by the variety of different kinds of advocates and representatives potentially involved. This article will provide a very basic overview of the roles and responsibilities of talent agents, employment agencies, managers, and lawyers, as well as resources for artists to protect their rights.

Talent Agents and Talent Agencies

An artist's first concern is usually getting (or remaining) employed. This is where talent agents and employment agencies come in. The role of the talent agent is to find work for their client. In exchange, they receive a percentage of the artist's salary for that work. In most states, including New York and California, talent agents need to be registered and licensed. In New Jersey, the Division of Consumer Affairs regulates talent agencies. What does state registration and licensing mean for artists? Often, state regulations will require agents to provide copies of all employment contracts, only allow fees if they are included in a written contract, and even set a maximum fee. For example, a licensed talent agent in New York may not take more than 10% of their client's compensation for any one job (20% if the job was an orchestral performance or an opera).

Licensed employment agencies are usually required to display their license in a clearly visible location. In both New York and California, if a talent agent is "not a person of good moral character," their license can be suspended or revoked. This means that if an individual agent or employment agency has violated their contract with a client, stolen money, or even published false information, they can be punished. If an artist thinks that this has occurred, they can file a complaint with the agency in charge of issuing the license. In New Jersey, talent agencies, sometimes called booking agencies, are regulated by the Office of Consumer Protection. Complaints can be filed using the "Regulated Business Complaint Form" at www.state.nj.us/lps/ca/ocp/complaints/htm. In New York City, this is handled by the Department of Consumer Affairs. Complaints can be filed online, at http://www.nyc.gov/html/dca/html/contact/contact_form.shtml. After a

complaint is filed, the first step is usually mediation, which means that an employee of the Department of Consumer Affairs acts as a neutral third party to try to help everyone involved come to an agreement. If mediation is not possible, the Department may launch an investigation and punish any violations of New York regulations. In California, the Labor Commissioner handles disputes and complaints.

If an artist belongs to a union, it is important that their agent have a “union franchise.” This means that an agent has agreed to follow certain union regulations designed to protect the artists who are union members. In exchange, the union allows the agent to represent its members.

Managers

There are two kinds of managers: “personal managers” and “business managers.” A personal manager is an advisor to an artist. They help guide their client’s career. Unlike a talent agent, their concern is larger than simply finding the next job. It is to build their client’s “brand” and help them reach their long-term goals.

Unlike talent agents, managers are not heavily regulated and generally do not need to be licensed. Their duties and obligations will be based on the contract they sign with their client. They are usually paid a percentage of an artist’s overall income. They might introduce artists to talent agents and are sometimes talent agents themselves. If a manager is also an agent, they will be subject to all of the usual talent agent regulations. Managers are often part of a management company.

A “business manager” is similar to a personal manager, but specializes in financial matters. Most business managers are accountants. They often have special obligations to their clients, known as “fiduciary duties.” This means that if a business manager leaves their client, they can’t use confidential financial information in competition with that former client.

Lawyers

Lawyers can play a variety of roles in the career of an artist. A lawyer might be employed occasionally, to look over a contract and explain the meaning of its terms before the artist signs it, or a lawyer may be a permanent member of the artist’s “team.” Some talent agents and managers are also lawyers.

Lawyers are held to especially high ethical standards. The ethical rules governing lawyers are long and complex. This is only a brief overview of the most relevant principles. The ethical duties include keeping information related to representation confidential, as well as special rule about conflicts of interest. Lawyers cannot represent their client in one matter and then directly oppose them in another matter without special permission. This is even true when the matters are completely unrelated. If a lawyer has a less serious conflict of interest, it is possible for the lawyer to continue their work as long as everyone involved is fully informed of the situation and gives their consent in writing. Lawyers are expected to disclose even potential conflicts of interest.

Lawyers owe loyalty to their clients. Because of this, if they represent a client in a particular deal, and the relationship ends before negotiations are finished, that lawyer may not represent the other party in the deal. Since they may have confidential information about the client, including financial information of personal issues, the representation would be unethical.

Lawyers are licensed by the state in which they work. Even when they are acting as a talent agent or personal manager, they are still expected to behave ethically. If a lawyer violates an ethical duty, they may be punished by a state agency. Complaints about lawyers licensed in New Jersey can be filed with the New Jersey Office of Attorney Ethics at www.judiciary.state.nj.us/oe/index.htm.

Useful Resources

This article is only a very basic guide to the roles and duties of various types of people who might represent or advocate for an artist. For more information about the laws protecting artists and regulating lawyers, managers, and talent agents, the following books and websites may be helpful:

New Jersey

New Jersey Division of Consumer Affairs: Regulated Businesses Section
<http://www.njconsumeraffairs.gov/ocp/regulate.htm>

Office of Attorney Ethics
<http://www.judiciary.state.nj.us/oe/index.htm>

New York

New York General Business Law, Article 11: Employment Agencies
<http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

New York Arts and Cultural Affairs Law, Article 37: Theatrical Employment Contracts; Safety Precautions for Certain Performers
<http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>

NYC Department of Consumer Affairs
<http://www.nyc.gov/html/dca/html/home/home.shtml>

A Guide to Attorney Disciplinary Procedures in New York State
http://www.nysba.org/Content/NavigationMenu/PublicResources/UnhappywithaNYAttorney/Unhappy_with_a_NY_At.htm

California

The Talent Agencies Act
California Labor Code, section 1700
<http://codes.lp.findlaw.com/cacode/LAB/1/d2/6/4/1/s1700>

California Labor Commissioner
<http://www.dir.ca.gov/dlse/dlse.html>

Complaints Against Attorneys
http://www.calbar.ca.gov/state/calbar/calbar_generic.jsp?cid=10179&id=1144

Nationwide

The Association of Talent Agents

<http://www.agentassociation.com>

The Screen Actors Guild

www.sag.org

Actor's Equity Association

www.actorsequity.org/

American Bar Association Consumer's Guide to Legal Help

www.findlegalhelp.org

Books

“All You Need to Know About the Music Business” by Donald S. Passman

Written by a lawyer, this book explains the legal and business aspects of the music industry for musicians.

“Law and Business of the Entertainment Industries” by Donald E. Biederman , Martin E. Silfen, Robert C. Berry, Edward P. Pierson, and Jeanne A. Glasser

This is a textbook, designed for law students, that covers many legal topics in entertainment law, including the music, film, television, theater, and publishing industries. It is long and thorough, but is more in-depth than most non-lawyers need.

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