

L A W O F F I C E S O F



L I T W A K &amp; H A V K I N

## HOME

"Finding and Retaining Attorneys and Managers in the Music Industry"

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## L & H PROFILE

I. Introduction

## L & H PARTNERS

Attorneys and managers perform important services for people in the music industry. This article will discuss the advantages and disadvantages of the various types of representation for individuals and companies involved in the music business.

## NEWS & UPCOMING EVENTS

This article provides general information and should not be considered legal advice. For advice and guidance regarding any particular legal problem, you should consult an experienced attorney.

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II. Entertainment Attorneys

### A. Overview

Entertainment law is a broad field and there are many different types of attorneys practicing within it. Generally, attorneys are divided into two categories: litigators and transactional attorneys. Litigators handle lawsuits such as claims for breach of contract, copyright infringement, fraud, etc. Transactional attorneys generally draft and negotiate contracts; for instance, negotiating a recording agreement with a record label or a management agreement between a recording artist and a manager.

Within the field of entertainment law, some attorneys practice both litigation and transactional laws; however, many entertainment attorneys specialize in one area such as negotiating contracts in the music field.

### B. Should I Use an Attorney?

Attorneys should be retained to analyze, draft and negotiate contracts. Some entertainment attorneys also provide additional services for clients. For instance, in the music field, some lawyers "shop" aspiring recording artists. In other words, they try to find a record label to sign the recording artist to a recording contract.

### C. Finding a Lawyer

First and foremost, it is recommended that anyone seeking an attorney find an experienced attorney familiar with the type of law and industry the client is involved in. You do not want an attorney who specializes in family law handling the negotiation of your management contract with a music management company. You should specifically ask your attorney how much experience he or she has had with your particular legal issue. For example, if you are a struggling musician looking for a recording agreement with a major label, how much experience does the attorney have in finding deals with record labels? If you are litigating a copyright infringement case in federal court, how many of those types of claims has the attorney handled? How many trials has he or she been the lead attorney on?

In choosing an attorney, perhaps the best advice is to follow the recommendation of people you trust, such as friends or colleagues. In addition, many local bar associations have referral services. Non-profit organizations, such as California Lawyers for the Arts, also provide referrals to entertainment attorneys. You may need more than one attorney to handle your legal work. For instance, if you are a recording artist, you will probably need an attorney, other than a music attorney, to handle your divorce or tax problem.

#### D. Fee Agreements

Once you have agreed to retain an attorney, it is very important that you have a written agreement with the attorney that you completely understand. Attorneys work on three basic types of fee arrangements:

1. Hourly: In this type of fee arrangement you are charged for the attorney's time by the hour. Experienced entertainment attorneys generally charge \$250 to \$450 per hour in the Los Angeles area. However, you may be able to find an attorney for less depending on your particular legal needs. For instance, if your attorney likes working with promising bands, he may be willing to accept a lower hourly fee with regard to certain matters.

Make sure the attorney agrees to provide monthly, detailed, itemized bills for his services. Remember that in addition to all attorney fees, you will usually be charged for all costs such as copying, postage, long distance telephone calls, etc.

2. Flat Fee: In this type of fee arrangement, the attorney agrees to take a set amount for his or her services. For instance, an attorney may charge \$1000 to draft a management contract between a personal manager and an aspiring recording artist. Under this arrangement, you will know up front exactly what the attorney fees will be. Some attorneys prefer not to take a flat fee for obvious reasons. If negotiations over the contract are protracted and more than the attorney expected, he will be making less than he anticipated per hour for his work. Conversely, if you retain an attorney who has recently drafted the exact type of contract that you need, he or she may be able to modify the preexisting contract and do the work in a very short amount of time.

3. Percentage/Contingency Fee: Some attorneys charge on a contingency basis which means that their fee is a percentage of the gross amount recovered or received by the client. For instance, personal injury cases are almost always done on a contingency basis with 33-1/3 % or 40% of the gross settlement, verdict or judgment paid to the attorney. In the music field, it is common for attorneys to charge 5% of a recording artist's income for handling a client's legal work. For the struggling singer or musician who does not have the money to pay an hourly fee, this might seem like an appealing alternative. However, if the artist becomes very successful, 5% can turn into a substantial sum of money. If the attorney also "shops" the artist to record labels, he/she might charge an additional 5% for that service. Obviously, it may be difficult to get an attorney to agree to accept a percentage if he/she does not believe the proposed deal has a good chance of closing or if adequate dollars are not involved.

#### E. Communicating with Your Attorney

One of the most common complaints against attorneys is that they do not return phone calls promptly or at all. Attorneys have ethical obligations to communicate with their clients. The

communication does not have to be by telephone. It can also be by mail, fax or email. Try to agree on a method with your attorney for communicating the status of your legal matter. Also, find out exactly who is doing the work. Is the attorney going to be handing over your case to a junior associate who will actually be handling the legal work?

In sum, it is important to find an attorney with whom you are comfortable and who is qualified and experienced in your type of legal matter. If you feel as though the attorney you hired is not working out, you do not have to continue to utilize his or her services. Under California State Bar Rules, a client is free to change attorneys at any time he or she chooses. Of course, you will be obligated to pay the attorney for work done up to the time of discharge.

### III. Managers

#### A. Overview

Managers coordinate and oversee the career of actors, directors, producers, writers, recording artists, and musicians. They are not regulated by the Talent Agency Act and generally receive commissions of 15% to 20% of the client's gross income. Some managers exclude certain types of income from their commissions. For instance, if a manager obtains a new client who is already established in the music business and the client wants to branch out into television and film, the client may insist that the manager only commission his television and film work if the manager will not be involved in the client's music career.

Generally, managers will attempt to enter into a written agreement with their clients detailing the relationship. However, a written contract is not legally required and there are many instances of managers representing talent based on an oral contract for many years.

Managers generally represent a smaller number of clients than agents do. They focus on strategizing and monitoring the client's overall career. Personal managers should be differentiated from business managers. A personal manager manages the client's overall career as far as the direction it is taking, the projects a client should do, etc. A business manager is generally a CPA or accountant who manages the investments and financial matters for the artist.

#### B. How to Find a Manager

Most managers prefer to represent talent that are

already generating income so that they can earn commissions right away. However, there are managers who are willing to develop new talent. If you are a singer or musician, one way to attract a manager is by performing. If you have incredible musical talent, potential managers will find you. Also, managers look for that special charisma or "star quality" that record labels want in an artist. It may also be very helpful to have a great website and/or a Myspace page which showcases your music. Writing or producing for established artists may also get you noticed. Otherwise, you can find a manager through references and referrals. If you have an agent or entertainment attorney, they may assist you. Also, friends and relatives who are involved in the entertainment industry can steer you in the right direction.

### C. Management Agreements

Management contracts are typically two to four years in duration. Unlike a contract with an attorney, an artist cannot automatically or for no reason terminate a contract with a manager for a set number of years before its expiration. If an artist is entering into a new contract with a manager, he or she will want to make it as short a term as possible. From the artist's perspective, the management agreement can always be renewed. The manager's point of view will be that he or she is investing a lot of time, effort and sometimes money (loans) in the career of an artist (especially a new artist who has never had a recording contract with a record label) and it wouldn't make sense to agree to a one-year contract. The manager will not want a one-year contract because after it expires, the fruits of his or her labor may just be beginning to ripen.

### D. Producing a Client's Project

Many managers waive their management fees when they produce a client's project (such as a T.V. concert special) so the manager receives only a producer's fee and not his usual management fee. Some commentators have indicated that a manager should always get a specific conflict of interest waiver with a client when included in a client's project. Additionally, some attorneys recommend that if the manager creates a separate entertainment company which uses a client, the client should be included in the company. If the manager does enter into a business relationship with a client, the client should have independent legal representation.

### E. What Type of Representation Do I Need?

If you are a musician, music producer or writer, what

type of representation do you need? Do you need a manager, an agent, an attorney or some combination of the three? Generally, an attorney is needed once a contract needs to be prepared on your behalf or, of course, if you are involved in litigation. You may also need some legal advice about how to protect yourself; for instance, entering into a written contract with your band members or with a music producer.

In conclusion, the representation an artist needs will depend on many factors including the income being generated and the artist's future needs and goals.

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