

Part III	COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES
Title II	ACTIONS AND PROCEEDINGS THEREIN
Chapter 231	PLEADING AND PRACTICE
Section 85P 1/2	CHILD PERFORMERS; CONTRACTS; COURT APPROVAL

Section 85P1/2. (a) No person shall employ, or exhibit or cause to be exhibited, or to use, or have custody of for the purpose of exhibition, use or employment, a child under the age of eighteen years, nor shall a person who is responsible for the care, custody or control of such child as a parent, relative, guardian, employer or otherwise, exhibit, use, or procure or consent to the use or exhibition of such child, or neglect or refuse to restrain such child from engaging or acting in a public or private place, except as hereinafter provided, whether or not an admission fee is charged and whether or not such child or any other person is to be compensated for the use of such child therein, in the following activities: singing, dancing, playing upon a musical instrument, songwriting, rehearsing, producing or recording a phonograph record or any derivation thereof, modeling, acting in or rehearsing for or performing in a theatrical or musical performance, or appearing in a pageant, as a subject for use, in or for, or in connection with the making of a motion picture film, or in rehearsing for or performing in a radio or television broadcast or program nor shall a person contract with such child as such child's agent in connection with any of the foregoing activities.

For the purposes of this subsection, "agent" means person entrusted by another whose business it is to acquire employment or engagements, act on behalf of, and represent such child in such foregoing activities.

(b) The provisions of subsection (a) shall not apply to the participation or employment, use or exhibition of a child in a church academy or school, including a dancing or dramatic school, as part of the regular services or activities thereof respectively; or in the annual graduation exercises of any such academy or school; or in a private home; or in any place where such performance is under the direction, control or supervision of a school department; or for recitals given in connection with private instruction associated with a continuing education course of study; or in the performance of radio or television programs in cases where the child or children broadcasting do so from a school, church, academy, museum, library or other religious, civic or educational institution, or for not more than two hours a week from the studios of a regularly licensed broadcasting company, or where the child participates or is employed, used, or exhibited in any motion picture, film, theatrical presentation or radio or television broadcast or program where the child is exclusively used for the temporary purpose of an extra player, where the child is part of a group or background scene, where the child performs as a day player, three day player, weekly player, stunt day player, or on-camera narrator or spokesperson on videotape, audiotape or motion picture film wherein said temporary use accumulates to no more than one hundred and twenty days of collective employment and occurs during hours when attendance for instruction is not required in accordance with law, or where the performance of a child is of a nonprofessional character and occurs during hours when attendance for instruction is not required in accordance with law.

For the purposes of this subsection, an "extra player" means a performer who is used for the temporary purposes of an "extra" or "audience" or "atmosphere" where the child is part of a group or background scene; a "day player" means a performer who is seen and who may speak a line or lines of dialogue and who is compensated in one day increments; a "three day player" means a performer who is seen and who may speak a line or lines of dialogue and who is compensated in three day increments; a weekly player means a performer who is seen and who may speak lines of dialogue and who is compensated in weekly increments; a "stunt day player" means a performer who performs identifiable stunts which illustrates or reacts to on or off-camera narration or messages and who is compensated by the day, an "on-camera narrator or spokesperson" means a performer who explains, or demonstrates, substantially in monologue.

(c) Notwithstanding the provisions of subsection (a), a child may be employed, used or exhibited in any of the exhibitions, rehearsals or performances set forth in said subsection (a); provided, however, that such employment, use or exhibition takes place pursuant to the provisions of a written contract which has been approved by the probate and family court for the county in which the child resides, where the child is employed or where the child performs or renders his services, or if the child is not a resident of the commonwealth in at least one county where a performance is to take place, or if the child is not a resident of the commonwealth and the employment or performance takes place outside the commonwealth, in the county within the commonwealth where the employer has his principal place of business.

(d) The probate and family court shall have jurisdiction over the following proceeding for contract approval by and between a child entertainer and a contracting entity. The court shall have the power to appoint a guardian of the

property to oversee the child's funds. A bond shall be required for an appointment of guardianship under the provisions of this section. The guardian of the minor child shall file a bond pursuant to which the court may, in its discretion, require surety. Such guardian shall render accountings as set forth in section one of chapter two hundred and six.

(1) Said proceeding shall be commenced by verified petition by the child's parent or legal guardian that (i) renders consent and requests that all or a portion of the child's earnings be set aside and (ii) said petitioner is qualified to be appointed limited guardian to oversee the child's funds or, if the court finds the petitioner not suitable, the court may appoint a limited guardian. For the purposes of this section, the terms, guardian of the property and limited guardian, shall refer to the same appointed party.

Said petition shall set forth the full name, residence and date of birth of the child with certified copy of birth certificate affixed, the full name and residence of the petitioner, the full name and business address of the contracting entity, a brief statement as to the child's employment and compensation under the contract, including where services of the child are to be performed, and a statement that the term of the contract during which the child is to perform or render services shall in no event extend for more than three years from the date of approval of the contract.

(2) The court shall ensure that the contract shall contain all the requirements for the rendering of services of the child and that the petition shall include a plan for the protection of earnings thereunder.

The court shall consider the following when determining the protection of earnings:

(i) the interest of the petitioner in the contract or proposed contract or in the child's performance under said contract;

(ii) the parties who are entitled to the child's earnings, and, if the child is not so entitled, facts regarding the property and financial circumstances of the parent or parents or legal guardian or other third party;

(iii) a bank or trust account used expressly for the deposit of fees generated under the contract and the relationship of any proposed trustee of the child's funds;

(iv) the percentage of fees generated which are intended for deposit; and

(v) the child's financial advisor or other third party who shall render investment advice and administer the bank or trust account.

(3) The court shall ensure that the contract shall be limited to a term of three years, inclusive of any extensions by options or otherwise, except for television broadcast or program contracts which shall be limited to a term of five years.

(4) The court in its discretion may appoint a guardian ad litem to represent the interests of the child. The guardian ad litem fee shall be paid by the party contracting with the child. The court shall further ensure that the contract shall provide for the continuing education of the child by way of tutoring services in the event that said child performs or renders his services outside of the commonwealth for a period of time pursuant to section one of chapter seventy-six. Costs for said education shall be provided by the party contracting with the child.

(5) The court shall not approve of any contract executed by the child unless the parent, parents or guardian of the child have assented to such contract, in writing, or the court shall find that the child is emancipated.

- (6) Prior to determining whether to approve the contract, the child shall appear personally before the court so that the court may make inquiry of the wishes of the child.
- (7) The court shall not approve of any contract unless the criteria expressed in paragraphs (2) to (6), inclusive, of subsection (d) have been complied with.
- (e) The approval of a contract by the court shall not exempt the child or any person employing such child from other provisions of law regarding employment of minors.
- (f) Court approval of a valid contract shall serve to bind the child as if such child executed the contract personally as an adult; and the child shall be bound to all provisions including the permanent sale of intellectual property rights; provided, however, that such revocation of approval of the contract by the court shall not include the transfer back to the child of intellectual property rights unless there has been a showing of fraud or misrepresentation by the employer; and, provided further, that the probate and family court approving such contract shall retain the authority to revoke approval of the contract, or modify its terms if assented to by both parties, if the court finds that the well being of the child requires such disapproval.
- (g) For the purposes of subsection (f), intellectual property rights shall be defined as those rights of copyright and trademark explicitly assigned, licensed or otherwise conveyed in the contract by the child to the contracting entity. Any and all rights of privacy and rights of publicity assigned, licensed or otherwise conveyed by the child to the contracting entity shall transfer back to the child upon such revocation of approval.