



Performance Contracts 101 for Dancers

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Today, we'll learn:

- The difference between legal advice and legal information (and why you need to know).
- What must, should, and could be in a dance performance contract.
- Tips for finding and speaking with an attorney to create a contract for you.
- Tips for finding self-help resources to write your own.
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Legal advice v. legal information

What's the big difference?

It's all about YOU

- “Legal information” is/are neutral facts and opinions.
- “Legal advice” applies those facts and opinion to YOU and to YOUR PARTICULAR CIRCUMSTANCES.
- Think of it like a diet---what YOU should eat depends upon your health, age, gender, needs, etc. Not just what you read in a diet book or what your best friend eats.

The Big Take-Away

- If the resource (book, website, person, etc.) doesn't know all about YOU, then it's just information.
- This presentation will NOT give legal advice (I don't know you).

What is a “contract”?

Oral versus written

What is a “Contract”?

- A contract can mean two different things:
- (1) A legally recognized and enforceable agreement OR
- (2) a writing detailing such an agreement

- So, a contract (probably) does not have to be in writing.

Oral Contracts

- Big Exception: some situations courts believe have such potential for fraud that they **MUST** be in writing to be enforced
- Possible examples for performers
 - Service contracts which, by their own terms, cannot be completed within one year (e.g. a wedding 13 months away)
 - Marriage as consideration (if he promises to marry you if you dance for him, get it in writing!)

But a writing is better.

- Proactive:
 - Confirm that you have an agreement
 - Reference for both of you about terms
- Reactive:
 - Quicker and easier (and, if you need an attorney, therefore cheaper) to enforce

Why a Signed writing?

- The law presumes you read, understood, and agreed to what you signed.
- So, if your client signed it, they are legally saying that they agreed to it.

How to get a contract in writing

- If the client doesn't want a "formal" contract, you can still:
 - Save an email with their response
 - Save text messages and voice mails
 - Record conversations (know your state wiretap laws!) or have a friend with you
 - Send a letter

Barriers to Signing

- How are you presenting your contract to the client?
 - Consider your professional image and presentation
 - Consider the client's sophistication
- Contract appearance
 - How long and hard to read is it?
 - What do other dancers have luck using?
 - Speak with other dancers, other entertainers in your area, see sample forms (but just as suggestions!)

Take-Away

- A contract (probably) does not have to be in writing.
- There are many good reasons to get it in writing.
- If you're having clients balk at signing contracts, consider their situation and your presentation.
- There are possible alternatives if you simply can't get a formal, signed contract.

What must be in a contract?

Contract **MUST** have

- Reasonably certain **Terms**
 - Parties, time period, price, services. More on this in a bit.
- **Consideration** (“Tit for tat”)
 - So charity work is probably not enforceable
- **Intent** to be enforced
 - Do you mean this to end up in court?

Specific “Must Haves”

- You must have **agreement** as to all terms:
 - Parties to the contract
 - Duration/date
 - Price
 - Description of service

More on “Parties”

- Who is the contract for? You or your business?
- Who is signing? Your actual client? Their agent? Some random go-between?

Is the real client signing?

- Know who you are dealing with!
- How can you know they are representing the client?
 - Express (e.g. client told you this was their agent)
 - Implied (e.g. by custom, like an manager)
- If the person signing does not represent your client, don't! Get the client to sign.

More on “Duration”

- If there's no duration of service listed, then it's terminable at will.
- For example, if you are to dance monthly at a restaurant, but there's not explanation of how many months, they could cancel after one month.

More on “Price”

- If no price is listed, a court could insert a reasonable rate.
- Yet another reason why accepting low-paying gigs can damage the community as a whole....

More on “Description”

- Look carefully at your advertising, website, and social media. Are you so specific that a client could assume that they’ll be getting everything listed on your website?

What could/should a
performance contract have?

What else could it have?

- (Almost) anything you both agree to.
- Exceptions:
 - It can't be illegal (e.g. no getting paid in drugs)
 - It can't be contrary to public policy (e.g. "Do Not Compete" clauses that are so broad that they are considered anti-competitive)
 - Penalty clauses--additional negative consequences if one party breaches the contract.

Planning Ahead

- What if I can't perform?
- What if audience is unruly?
- What if area is unsafe?
- What about tips?
- What about music?
- What props will I use?
- Photos, videos, promotions, advertisements, referrals
- What if client breaches?
 - Breakdown of parts of performance (reserving time? Rehearsals? Costuming?)
 - Costs of enforcement

Planning for Failure

- What if the client breaches?
 - You may want to breakdown of the parts of preparing for the performance explicitly so a court knows what your damages are (Reserving time? Rehearsals? Costuming?)
 - What would it cost to enforce the contract? Do you want to say that a client has to pay for your court and attorney's fees?

The Fine Print

- Don't forget: Devil's in the details.
 - Choice of venue (What court will you go to?)
 - Choice of law (What state law will apply?)
 - Arbitration/mediation clause (Skip court?)
 - Severability clause (What if part of the contract is bad?)
 - Right to waive portions of the contract
 - Is this the entire agreement or does it incorporate other documents?
 - How to make modifications/terminations
 - Consent/Waiver Provisions

A Bit on Waivers

Because everyone wants to know

Liability Waivers

- Not a DIY project, in my opinion.
 - You can always have a separate liability waiver if you still want to write your own performance contract.
- This is planning your defense NOT a magic bullet against lawsuits.
- May NOT mean they cannot sue.
 - It can function as a defense by showing that your client knew about the risks and voluntarily accepted them.

Things to Consider

- Law on waivers varies **greatly** state-to-state. Your state law may require certain terms or presentation.
- Your insurance company may have requirements. Give them a call/email.

Tips for finding and speaking with an attorney

Do I need a lawyer?

- It can be a personal decision:
 - What's your own personal risk aversion?
- It can be a business decision:
 - Does state law require an attorney?
 - Cost v. Benefit

Finding an Attorney

- Look for experience
 - My personal suggestions: Look for one who has entertainment, business and/or liability law experience.
 - Law can be very specialized—e.g. an environmental policy lawyer probably not the best choice.
- Word-of-mouth can be great. Call other dancers and business owners you know.
- More attorneys have websites and blogs now.

State Bar Associations

- Your state bar will have a list of attorneys, organized by practice area.
- It may also have low-cost (possibly even free) attorney resources for you.
 - E.g. Arizona has the “Modest Means” project.

Talking \$ to Your Attorney

- Do they have malpractice insurance?
- Do they charge for a consultation?
- Flat fee or hourly rate?
- If hourly, what do they estimate it will cost?
- Can they cap it?
- What if they hit the cap?

Maximizing Your Attorney

- Time is money. Make the most of it.
 - Be prepared for your meeting
 - Keep an attorney file
 - Keep in contact
 - Don't do too much idle chit-chat if they bill by the hour (really it's by the minute)

Keep Up-to-Date

- Update your contracts regularly—it's worthless if the law's changed and e.g. your waiver is now obsolete
 - Does the attorney have a method or should you contact yearly?
 - Businesses, for example, may want to remember to do it every year at tax time.

Tips for finding self-help resources

Classic format

CONTRACT

_____ (“Dancer”) and _____ (“Client”) agree
that Dancer will perform _____ on
_____ (date) for _____ (price).

Signed and dated:

Tips When Writing

- Be as specific as necessary but not more than that.
- Have a non-dancer read it and tell you what they think it says.
- Be concise.
- Be reader-friendly and organized.

Resources

- Check out law libraries.
 - If you are near a public law school, great.
 - Also check out your local court. They probably have a public library.
- They will have:
 - Helpful reference librarians
 - Public internet access to databases (such as Westlaw, Lexis, LoisLaw, Fastcase)
 - Reference guides (even for lay people)
 - Sample Forms

Online Resources

- Legal blogs
- Law review articles
- Sample legal forms
- Law school pages
- Internet searches

Always check for sources and double-check them yourself.

Questions?

Contact Me

- Attorney in Arizona:
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- Belly dancer performer and instructor:
 - <http://www.amiaditri.com>