

Why Every Club & Every Band Should Have a Written Contract

by KATHERINE TANK & WILLIAM OHLE of Schwabe, Williamson & Wyatt

[Jake Blues] "How about the money for the gig, Bob?"

[Bob, Club Owner] "Well, I owe you \$200, but you boys drank \$300 worth of beer, so it looks like you owe me \$100." The Blues Brothers (1980 - paraphrased).

As Jake (John Belushi) discovered all too late, he would have benefited greatly from a written contract – one that provided for free beer. A surprising number of bars, restaurants and hotels with live music hire their "causal" acts with nothing more than a handshake, leaving it to the bartender to work out the details at 2 a.m. While formal entertainment agreements bring to mind the image of a prima donna specifying the brand of dressing room Champagne, most owners benefit from an agreement that covers not only the basics such as time and payment terms, but also provides the owner with control where control is most needed.

"This amp goes to 11"

By far the number one complaint heard from owners and patrons is "the band is too loud." But how often have you seen a simple contract clause that gives the owner the power to control volume and provide for enforcement? Most often, volume is left up to the band and the individual musicians, sometimes with egos that manifest themselves in the size of their amplifiers. I've been in situations where, when asked to turn down, the guitar player has actually turned the volume up, just for spite. Nothing clears a



Katherine Tank



William Ohle

room faster than a Hendrix wannabe. In situations like that, and with no other enforcement mechanism, all an owner can do is fire the band on the spot or wear ear plugs. A simple and rather effective alternative is to include in a written agreement a docking provision that reduces the band's pay, by say \$50, for every time (after a first warning) that the owner must ask the band to turn down. Any band that balks at such an agreement, you don't want to hire.

"Can I sit in?"

Another sensitive subject is the substitution. An owner usually expects that the band it hires is the band that plays, but that is sometimes not the case. Bands change personnel and people get sick; substitutions happen. There is a custom and standard in the industry that allows for substitutions, so unless an owner contracts for a specific person, or there is a noticeable degradation in quality, an owner can't fire a band just because its members change. There is, however, something just as common, but more

ominous – the "guest artist." The worst-case scenario is the inebriated customer who remembers playing in a high school band and wants to "sit in." Sometimes, to be honest, it's good customer service to let them; especially later in the evening with a thinning crowd. Although it sounds awful, if the customer is having fun, others probably are as well, and they are more likely to come back and tell their friends. But, there must be limits and there must be an understanding of who's ultimately responsible when the customer decides to smash the guitar into the drums. Also, there must be a way to shut it down. One or two songs is fine; an entire set is not. If this is understood up front, it rarely becomes a problem. Trying to get a mike away from a drunk by yourself can get messy.

The Fine Print

Other performance issues can be dealt with just as easily, such as dress code, alcohol consumption, equipment responsibilities, stage clutter, and the like. And, the contracts do not need to be long. They can be as short as the front and back of a sheet of paper and still be legible. Of course, the contract should include the necessary information, such as the contact member for the band, a Social Security Number or Tax ID, payment terms, and breaks, and should also include lawyerly clauses covering indemnification, force majeure, independent contractor status, dispute resolution, and consequential damages. Finally, no contract should fail to address whether the beer is free.

Katherine Tank is a shareholder in the

Bend office of Schwabe, Williamson & Wyatt and focuses her practice in the areas of labor and employment law. She can be reached at ktank@schwabe.com.

William Ohle is an attorney in the Portland office of Schwabe, Williamson & Wyatt. His practice focuses on the representation of business and design professionals in a variety of litigation, regulatory, and contractual settings. He can be reached at wohle@schwabe.com.

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