prohibitions against the sale of alcoholic beverages to minors, so long as they comply with ABC's minor decoy rules in section 141, Title 4 of the CCR (see MAJOR PROJECTS). Under section 141(b)(5), after the point at which an ABC licensee has served alcohol to a minor decoy and prior to the issuance of a citation, "the peace officer directing the decoy shall make a reasonable attempt to enter the licensed premises and have the minor decoy who purchased alcoholic beverages make a face to face identification of the alleged seller of the alcoholic beverage." Under section 141(c), "[f]ailure to comply with this rule shall be a defense to any action brought pursuant to Business and Professions Code section 25658."

In *Acapulco*, a 19-year-old minor decoy working with a Los Angeles Police Department officer ordered a beer in a restaurant. Without first requesting identification, the bartender served the decoy, and the decoy paid for the beer. A police officer seated nearby observed the transaction, and cited the restaurant's owner without having the decoy make the required face-to-face identification of the bartender. After a hearing, an ABC administrative law judge sustained the charge and ordered a 15-day suspension of Acapulco's liquor license. On appeal, the Alcoholic Beverage Control Appeals Board affirmed the suspension, refusing to give section 141(c) a "rigid and literal interpretation" because the police officer had been sitting only a few feet away at the time of the sale. According to the Board, the rule must "take into account reality," and "the reality of this case" is that "there is no need for the requirement of identification when the peace officer is already within the premises and is an eyewitness to the transaction." Acapulco appealed.

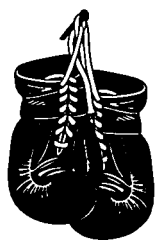
"What the Department has done is to unilaterally decide that rule 141(b)(5) applies in some situations but not others, a decision that exceeds the Department's power."

The Third District reversed. Focusing on the language of ABC's own rule, the court noted that section 141(c) states that failure to comply with the face-to-face identification rule "shall" be a defense to an enforcement action. "We reject the Department's contention that its refusal to apply rules 141(b)(5) and 141(c) is no more than an exercise of its right to 'interpret' a rule governing its enforcement operations. To ignore a rule and the defense that arises from law enforcement's failure to comply with that rule is not a matter of 'interpretation.' What the Department has done is to unilaterally decide that rule 141(b)(5) applies in some situations but not others, a decision that exceeds the Department's power....We hold that rule 141(b)(5) means what it says...."

Numerous retailers and their trade associations filed *amicus curiae* briefs in support of Acapulco in the case; their briefs included ABC's own statistics, of which the court took judicial notice, indicating that 18,577 attempts to buy alcohol by underage decoys were made between mid-1994 and September 1998, and that the use of minor decoy programs has increased substantially since 1995. According to *amici* and the court, 48% of all violations over the past three years have been based on decoy sales. "The Department's increasing reliance on decoys demands strict adherence to the rules adopted for the protection of the licensees, the public and the decoys themselves. If the rules are inadequate, the Department has the right and the ability to seek changes. It does not have the right to ignore a duly adopted rule."

Athletic Commission

Executive Officer: Rob Lynch ♦ (916) 263–2195 ♦ Internet: www.dca.ca.gov/r_r/athletic.htm



The Athletic Commission, part of the state Department of Consumer Affairs (DCA), is empowered to regulate professional and amateur boxing and full contact martial arts and kickboxing under the Boxing Act, Business and Professions Code section 18600 *et seq.* The Commission's regulations are found in Division 2, Title 4 of the California Code of Regulations (CCR). The Commission consists of eight members, each serving four-year terms. All eight members are "public members" as opposed to industry representatives.

The Commission has sweeping powers to approve, manage, and direct all professional and amateur boxing and full contact martial arts shows or exhibitions held in California, and to license professional and amateur boxers and martial arts competitors, promoters/clubs, referees, judges, matchmakers, booking agents, timekeepers, managers, trainers, seconds, and training facilities. The Commission is authorized to develop and administer appropriate examinations to determine the qualifications of individual athletes, including pre-bout physical examinations, HIV/HBV testing, neurological testing, and eye examinations. The Commission is also responsible for establishing and administering financial protection programs for competitors, such as the Professional Boxers' Pension Plan. The Commission places primary emphasis on boxing, where regulation extends beyond licensing and includes the establishment of equipment, weight, and medical standards. Further, the Commission's power to regulate boxing extends to the separate approval of each contest to preclude mismatches. Commission representatives attend all professional boxing contests.

The Commission's goals are to ensure the health, safety, and welfare of the competitors, and the integrity of the sports of boxing and martial arts in the interest of the general public and the participating athletes.

Major Projects

Professional Boxers' Pension Plan Issues

Pursuant to Business and Professions Code section 18880 *et seq.*, the Commission created the Professional Boxers'

Pension Plan in 1982 to provide boxers with a small amount of financial security once they have retired from boxing. The pension plan is funded with contributions from boxers, managers, and promoters, which are deposited into the Commission's Boxers' Pension Fund for distribution to eligible boxers upon regular retirement at age 55, medical retirement, or vocational early retirement at age 36. Since 1994, the Commission has contracted (via an invitation for bids process) with an outside investment firm to manage its pension plan. *[14:2&3 CRLR 38]*

Pursuant to Business and Professions Code section 18880 et seq., the Commission created the Professional Boxers' Pension Plan in 1982 to provide boxers with a small amount of financial security once they have retired from boxing.

Following a 1992 audit of the pension plan by DCA's Internal Audit Unit *[12:4 CRLR 56]*, the Commission moved the pension revenues residing in the Boxers' Pension Fund, part of the State Treasury, into the Surplus Money Investment Fund (SMIF) in the general fund. The Commission made this transfer in order to gain a higher interest rate on the funds. However, the Commission subsequently learned through another audit that Government Code section 16310 authorizes the state to borrow from the SMIF without paying interest. Because the state has been continuously borrowing the money, very little interest has been earned. This is inconsistent with Probate Code section 16040, which requires the Commission—as fiduciary—to utilize prudent investment standards and due diligence criteria for the selection, investment, monitoring and reporting of Pension Fund monies for the Plan.

Thus, on August 14, Commission Executive Officer Rob Lynch wrote a letter to Linda Fulcher of the Department of Finance (DOF), seeking approval of two requests: (1) The Commission wants its Boxers' Pension Fund monies removed from the SMIF and transferred to its private investment services provider (ISP), where the bulk of the pension money already resides; and (2) the Commission also seeks to deposit all future pension assessments directly into the Plan's ISP instead of into the general fund. On September 2, Fulcher wrote a letter to Glen Haas of the State Controller's Office, stating her view that the Boxers' Pension Fund should be classified as a pension trust fund and treated like all other pension trust funds; she noted that federal law prohibits pension plan administrators (in this case, the state) from borrowing pension monies. At this writing, the Controller's Office has not responded to Fulcher's letter.

At its September 18 meeting, the Commission agreed to pursue legislation in the event that DOF or the Controller deny the Commission's request. Draft amendments to Business and Professions Code section 18882 would expressly state that contributions to the pension plan shall be deposited in and credited to the Boxers' Pension Fund, which shall not be deposited in or transferred to the general fund, and shall be used exclusively for the purposes and administration of the pension plan.

Also related to the Professional Boxers' Pension Plan, the Commission adopted emergency regulatory changes to sections 401(a)(2) and 405(c), Title 4 of the CCR, to implement a relatively new aspect of the plan, at its November 13 meeting. By virtue of legislation passed in 1995 and implementing regulations adopted in 1996, the Commission converted the pension plan from a "defined benefit" plan to a "defined contribution" plan. Due to the conversion, certain boxers who have made contributions to the plan will never be entitled to benefits from the plan; thus, they are owed a refund in the amount of their contribution plus interest. As amended in 1996, section 401(a)(2) requires the Commission to set up a "refund account" as a sub-account within the Pension Fund to hold the contributions of these boxers; under sections 401(a)(2) and 405(c), the sub-account will exist until January 1, 2000, and Commission staff have until January 1, 1999 to contact these boxers and notify them that they may be entitled to a refund. Eligible boxers must claim a refund by January 1, 1999, or forfeit the refund.

According to the Commission's statement of reasons for the emergency rulemaking, when these regulations were drafted, "it was unforeseen at that time the enormous volume of licensees the Commission would be notifying and the amount of staff time involved." Commission staff has even had to contact the Social Security Administration and the Internal Revenue Service to obtain updated addresses on many former licensees. The emergency amendments, which were approved by the Commission on November 13 and by the Office of Administrative Law (OAL) on December 4, extend the January 1, 1999 claiming deadline to January 1, 2000, thus giving staff another year to contact boxers eligible for a refund from the Pension Fund.

Per-Ticket Assessment to Fund Neurological Testing

Under Business and Professions Code section 18711, the Commission requires, as a condition of licensure and annual license renewal, each boxer to undergo an examination by a neurologist or neurosurgeon who has been approved by and contracts with the Commission. The physician may recommend any other tests deemed necessary and, based the results of those examinations, "may recommend to the Commission whether the applicant may be permitted to be licensed in California or not." The Commission's executive officer must review the physician's recommendations in determining whether to issue or renew a

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license; if the EO refuses to grant the applicant a license, the applicant may not box in California until the denial has been overruled by the Commission. The cost of the neurological examinations required by section 18711 is paid from the Commission's neurological examination account, which is funded from three sources: a per-ticket assessment, shared payments by boxers and managers at the time of licensure, and interest earnings. Through these revenue sources, the program is intended to be self-supporting.

At its January 1997 meeting, the Commission established a per-ticket assessment of 34 cents to fund the neurological program with an annual budget of $92,000. Subsequently, the Commission realized that 34 cents per ticket is not adequate to fund the program. At the Commission's June 1998 meeting, Executive Officer Rob Lynch stated that—in order to adequately fund the program—an increase in the per-ticket assessment from 34 cents to 60 cents was needed immediately. The increase applies to all tickets sold plus complimentary tickets (but not to "working" complimentary tickets, such as those for security and media personnel). Lynch also recommended that the level of assessment be reviewed by the Commission every four months based on the potential fluctuation in event attendance. The Commission agreed to increase the neurological testing per-ticket assessment to 60 cents, and to review the assessment level every four months.

New Ringside Physician Program

During its summer meetings, the Commission reviewed and revised its program for approving ringside physicians and the list of duties which ringside physicians are expected to perform in their capacity as Commission appointees.

Business and Professions Code section 18705 requires each boxing promoter to arrange—at his/her own expense—for the attendance of a Commission-approved physician at all contests. The physician is responsible for conducting the pre-bout physical examination of the contestants and for observing the physical condition of the contestants during the bout; like a referee, the ringside physician is authorized to stop a fight if he/she believes that a medically related injury and the physical condition of a contestant so warrant. Under section 18705, the Commission is required to adopt a fee schedule for ringside physicians; the promoter pays the fee to the Commission, which in turn passes it on to the ringside physician.

In 1989, AB 112 (Floyd) (Chapter 471, Statutes of 1989) added section 18705.5 to the Business and Professions Code, requiring the Commission to adopt regulations detailing the criteria for its approval of a licensed physician as a ringside physician; pursuant to AB 112, the Commission adopted a number of regulations pertaining to ringside physicians. In 1991, the Commission adopted section 288, Title 4 of the CCR, which states that any physician seeking to be approved as a ringside physician must possess a current and unrestricted licensed to practice medicine in California. Further, any physician who has not previously been approved as a ringside physician as of 1991 (when the section was adopted) must hold staff privileges in medicine, surgery, or emergency medicine in an accredited acute care facility; must attend at least two ringside physician training clinics sponsored by the Commission; and must be "precepted" at six contests by an approved ringside physician, and receive a satisfactory evaluation on at least five of the precepted contests. *[12:1 CRLR 44; 11:3 CRLR 59; 11:1 CRLR 49]* Under section 287, Title 4 of the CCR, the Commission must certify each year a list of approved ringside physicians. Section 302, Title 4 of the CCR, provides that at least two Commission-appointed physicians must have seats at the immediate ringside during all boxing matches.

In 1994, the Commission—at the suggestion of Dr. Robert Karns, then chair of the Commission's Medical Advisory Committee—instituted a formal approval system for credentialing physicians who wish to serve as ringside physicians. The process requires an application, proof of licensure, a list of hospital privileges, a letter from the administrator or chief of staff at one of the hospitals showing that the physician is credentialed to practice emergency medicine, internal medicine, family practice, general practice, general surgery, or some other specialty that would be considered relevant to the tasks which a ringside physician should be able to perform; proof of malpractice insurance, and two passport-sized photographs. *[14:4 CRLR 40–41]*

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Recently, several questions have arisen as to the duties of Commission-approved ringside physicians; specifically, a physician asked whether he is expected to suture lacerations at the boxing venue. In May 1998, Commission Executive Officer Rob Lynch surveyed the policies on this issue in Texas, Nevada, Florida, and New Jersey. In those states, doctors rarely suture at the venue due to liability issues; boxers are usually instructed to go to a local hospital emergency room, and may be provided with written aftercare instructions by the hospital or the state commission. This survey led the Commission to review a list of ringside physician duties drawn up by Dr. Karns in August 1991; at its June 1998 meeting, the Commission reviewed the three-page document and made several revisions at the direction of Deputy Attorney General Earl Plowman and DCA legal counsel Anita Scuri.

Also in June, the Commission reviewed an exhaustive legal memorandum by Plowman on the potential tort liability of the Commission and the licensed physicians it approves to act as ringside physicians at boxing matches. Plowman concluded that the Commission is probably immune from a damages suit for acts or omissions committed by its appointed ringside physicians; the Commission is probably not required to defend or indemnify an appointed ringside physician who is sued in tort for acts or omissions committed in his/her capacity as a ringside physician; and ringside physicians are not immune from liability in tort lawsuits for errors or

omissions committed in the performance of their appointed duties. Plowman suggested that so long as ringside physicians act in such a manner as is reasonable and necessary to perform the duties called for in the Commission's statutes and regulations, then potential liability is minimal. However, if a physician fails to perform the duties called for by law, exceeds the duties set forth in law (such as suturing in the boxing venue), or negligently or incompetently renders medical services, then liability is more probable. Plowman also noted that "in boxing or martial arts, where the object is to actually and intentionally strike and incapacitate an opponent, it is a long reach before any participant in a boxing or martial arts match could sue anyone for injuries arising from even a sparring match. This does not mean that ringside physicians are entirely off the liability hook. Even in the context of an active sports setting, there is still a duty owed not to increase the risks of injury over and above those inherent in the sport." Since the ringside physician's role is limited to medical issues, liability might arise if he/she fails to stop a fight when he/she should do so, fails to render medical care, or renders it improperly, resulting in injury or death to the boxer.

Also during the summer of 1998, the Commission inspected its records and found that it did not have an updated list of ringside physicians as required by section 287, or renewal applications (with updated information) on its approved ringside physicians. On July 21, Commission Vice-President Tirso del Junco, Jr., MD, met with Commission staff and developed a new ringside physician certification program to improve the application procedures for all physicians. Under the new program, which was approved by the Commission at its September 18 meeting, current ringside physicians must reapply for approval every two years, rather than annually. The Commission classified all approved ringside physicians into one of three categories (senior ringside physicians, junior ringside physicians, and ringside physicians in training), and noted that training physicians must attend six shows with a senior ringside physician without pay, and must pass a test upon completion of the six training shows. Also, in response to comments by promoters (who pay the ringside physicians, pay for liability insurance for their productions generally, and want input into which physicians are assigned to their bouts), the Commission sent a letter to all licensed promoters asking for their preferences as to ringside physicians; the Commission promised to make every effort to assign a promoter's preferred physicians to his/her shows.

Boxers Over the Age of 36

On September 18, the Commission held a public hearing on its proposal to repeal section 281(a), Title 4 of the CCR, which currently states that no boxer over the age of 36 may be granted a license except by "special approval of the Commission," which has traditionally involved a personal appearance by the boxer before the Commission. Under existing procedures, Commission staff screen boxers over the age of 36 in supervised sparring sessions, and make a recommendation to the Commission as to whether to approve the license; the Commission has never overturned staff's recommendation. The Commission's repeal of the subsection would permit staff to approve or deny licenses to boxers over the age of 36, pursuant to Business and Professions Code section 18642.5 and section 283, Title 4 of the CCR.

Following the public hearing, the Commission agreed to repeal section 281(a). Staff prepared the rulemaking file on this regulatory change and submitted it on December 1 to OAL, where it is pending at this writing.

Pregnancy Testing

On September 18, the Commission agreed to seek legislation to add section 18713 to the Business and Professions Code, authorizing it to require pregnancy testing for all female boxers, professional or amateur. The increasing popularity of female boxing has created a concern about the consequences that may arise from females fighting while pregnant. Commission staff contacted several other state athletic commissions regarding their policies on pregnancy testing. Arizona, Pennsylvania, and Nevada have implemented some type of pregnancy testing requirement prior to all bouts, while Florida is not authorized to test. The proposed language would require any female licensed as a professional boxer, professional martial arts fighter, amateur boxer, or amateur martial arts fighter to present documentary evidence satisfactory to the Commission that she has been administered a blood or urine pregnancy test a minimum of ten days prior to each contest which confirms that she is not pregnant. The Commission hopes to find a legislative author for this bill in 1999.

The increasing popularity of female boxing has created a concern about the consequences that may arise from females fighting while pregnant.

Professional Boxing Officials' Training Program

At its September meeting, the Commission reviewed a report on the first-ever Professional Boxing Officials' Training Program, which was commenced by the Commission in February 1998 in both southern and northern California. The classroom portion of the program meets monthly for one year, with a final exam at the end of the year. The second year of the two-year curriculum will include demonstrations in the ring, judging a videotaped fight, one-on-one mentoring, attendance at fights, guest speakers, and lectures on regulations, mechanics, style, and judging skills. All of those who pass the final exam will become licensed; however, only the top five or six referees and judges may be assigned to events.

Legislation

SB 2238 (Committee on Business and Professions), as amended August 26, amends section 18643 of the Business and Professions Code to authorize the Commission to permit a professional boxer to spar with someone not licensed, under special circumstances, if a Commission representative is

permits to spar with professional boxers for training purposes only to those persons who meet the physical and mental requirements for licensure as a professional boxer. This bill was signed by the Governor on September 26 (Chapter 879, Statutes of 1998).

AB 2721 (Miller), as amended August 10, amends section 130 of the Business and Professions Code to specify that the term of office of any member of a DCA agency is four years expiring on June 1. The Governor signed AB 2721 on September 29 (Chapter 971, Statutes of 1998).

Litigation

On October 20, 1998, in ***United States Satellite Broadcasting Company v. Lynch, et al.***, No. CIV–S–98–1838 WBS/DAD, the U.S. District Court for the Eastern District of California issued an order enjoining the Commission from enforcing Business and Professions Code section 18832, which requires broadcasters of pay-per-view boxing, martial arts, and wrestling events to pay the Athletic Commission a 5% tax on their gross receipts. The court found that the law is unconstitutional under the first amendment.

This matter grew out of plaintiff's sale of pay-per-view telecasts of a June 28, 1997 live boxing contest in Las Vegas between Evander Holyfield and Mike Tyson to subscribers in California. The Commission demanded payment of the tax required by section 18832. Plaintiff questioned whether it could pay the tax and then seek a refund; the Commission failed to respond. Plaintiff refused to pay the tax, and filed a civil rights action in federal court under 42 U.S.C. section 1983 for declaratory and injunctive relief, alleging that the tax is unconstitutional under the first and fourteenth amendments to the U.S. Constitution. The Commission moved for dismissal of the case, and the parties also filed cross-motions for summary judgment.

According to the court, the Commission presented "no evidence or argument whatsoever on the amount of the costs, if any, incurred to the Commission by plaintiff's telecast into private homes of boxing matches which occur in another state."

The court quickly dispensed of the Commission's motion to dismiss the case. The Commission first asked the federal court to dismiss the case under the Eleventh Amendment, which limits the subject matter jurisdiction of the federal courts; however, the Eleventh Amendment does not apply where plaintiff is seeking declaratory and injunctive relief against state officials who are attempting to enforce allegedly unconstitutional statutes. The Commission's other defense was based on the Tax Injunction Act, 28 U.S.C. section 1341, which precludes a federal court from enjoining, suspending, or restraining the assessment, levy or collection of any tax under state law "where a plain, speedy and efficient remedy may be had in the courts of such state." The court examined the Boxing Act and several other California statutes which the Commission claimed contain a procedure for recovering a disputed tax, but found the Commission's reading of California laws to be "untenable" and denied the Commission's motion.

On the merits of the cross-motions for summary judgment, the court examined the language of section 18832 and found that it "imposes a five percent gross receipts tax exclusively on telecasts of boxing, martial arts, and wrestling events, as well as on telecasts of other combative events"—a content-based restriction on the dissemination of entertainment (which is protected speech under the first amendment). Such a restriction triggers "strict scrutiny," meaning the state must assert and prove that the tax is "necessary to serve a compelling state interest and...narrowly drawn to achieve that end."

In an attempt to overcome "strict scrutiny," the Commission advanced two arguments: The state has a general interest in raising revenue, and the section 18832 tax defrays the cost of running the Commission and assists the Commission "in its efforts to keep boxing clean." The court noted that although speech may be taxed to pay for the costs created by the speech itself, "the state may not merely use supposed 'administrative costs' as a guise for raising revenue." According to the court, the Commission presented "no evidence or argument whatsoever on the amount of the costs, if any, incurred to the Commission by plaintiff's telecast into private homes of boxing matches which occur in another state. Defendants do not even suggest how much money they spend every year to 'keep boxing clean.' Thus, even if the court could conclude that defendants have raised compelling interests, which it cannot, the court cannot conclude that the Boxing Act tax has been narrowly tailored to serve them." The court granted plaintiff's motion for summary judgment and enjoined the Commission from enforcing section 18832 against plaintiff.

A recent federal law and an October 22, 1998 stipulation have ended three years of litigation between the Commission and the Twenty-Nine Palms Band of Mission Indians, a federally recognized Indian Tribe, over the Commission's jurisdiction to regulate boxing on the Tribe's reservation. The action arose in 1995, when the Commission asserted jurisdiction to regulate and license boxing events staged and promoted or co-promoted by the Tribe on the Tribe's reservation. On August 4, 1995, the Tribe filed ***Twenty-Nine Palms Band of Mission Indians v. Wilson***, No. CV 95–5177–MRP, in the U.S. District Court for the Central District of California, an equitable action seeking a declaration that the State of California and the Athletic Commission have no jurisdiction or authority to regulate or require the licensing of boxing events that are staged and promoted by the Tribe on the Tribe's reservation; that the Boxing Act, Business and Professions Code section 18600, does not apply to boxing events staged and promoted by the Tribe on the Tribe's reservation; and that defendants—including the Commission—have no jurisdiction or authority to fine or suspend any California licensee who participates in such boxing events. The Commission filed a cross-complaint for declaratory and injunctive relief seeking a declaration with respect to the applicability of the Boxing Act to boxing events held on tribal land, and an injunc-

tion enjoining the Tribe and all persons acting in concert with the Tribe from promoting professional boxing events absent approval by the Commission until the Tribe is licensed as a boxing promoter by the Commission. The parties filed cross-motions for summary judgment. *[15:4 CRLR 58]*

On May 8, 1996, U.S. District Court Judge Mariana Pfaelzer issued a decision in favor of the Tribe. Federal law prescribes that certain states, including California, may enforce criminal/prohibitory laws on tribal lands; however, if the law is deemed civil/regulatory, it may not be imposed on the reservation. Whether a particular law is civil/regulatory or criminal/prohibitory depends on an examination of the nature of the activity and the overall legal context governing the activity; the test is "whether the conduct at issue violates the State's public policy....[I]f the intent of a state law is generally to prohibit certain conduct, it falls within [the federal law's] grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory [and thus not enforceable] on an Indian reservation." Although fighting is a crime prohibited by the Penal Code, Judge Pfaelzer found that California's overall statutory scheme carves out certain types of fighting and permits it under varying levels of regulation. The Boxing Act governs one subset of permitted fighting; other types of permitted fighting are governed by federal law, educational institutions, or other entities. "It is clear that California's public policy does not flatly prohibit boxing but rather permits boxing subject, in some cases, to regulation: California regulates professional boxing, delegates the regulation of amateur boxing to nonprofit organizations, and ignores military, collegiate, and recreational boxing....Therefore, California's boxing laws are civil/regulatory and not applicable to boxing contests staged on Indian reservations. The state is without jurisdiction to regulate or require the licensing of boxing contests or their promoters or participants when such contests are conducted on tribal lands and also without authority to fine or suspend any California licensee who participates in such boxing events."

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The Commission appealed Judge Pfaelzer's decision to the U.S. Ninth Circuit Court of Appeals. During the pendency of the appeal, Congress enacted the Professional Boxing Safety Act of 1996, 15 U.S.C. section 6301 *et seq*. The parties agreed that this new federal statute preempts state regulation of professional boxing on tribal lands, rendering part of the Commission's appeal moot. In an unpublished decision issued on July 30, 1998, the Ninth Circuit remanded the matter to the district court to decide the only remaining question—whether the Athletic Commission is authorized to fine or suspend California licensees who participate in boxing events on the Tribe's reservation. However, in an October 22, 1998 stipulation, both sides agreed to dismiss their complaints without prejudice. Deputy Attorney General Earl Plowman explained the significance of the matter as follows: "We have given up the right to pursue a small part of the action we filed originally, but reserved the right to sue the Indians again if there are specific issues which we believe are not covered by the new federal law. At the present time, there are no remaining issues with the Indians, per se, and the Commission has provided the necessary services to the boxing tribes to put on tribal boxing at their casinos."

Recent Meetings

At its September 18 meeting, the Commission reviewed the application of former Los Angeles Lakers superstar Earvin "Magic" Johnson, dba Magic Johnson Productions, for an original professional boxing promoter's license. The Commission also considered the application of Raymond Frye to serve as Johnson's matchmaker. The Commission granted Johnson the promoter's license, on the conditions that he meets the bonding requirement and that he contracts with a matchmaker other than Frye until the Washington State Athletic Commission completes its investigation into complaints regarding Frye's financial dealings as a matchmaker; the Commission tabled Frye's application until the Washington Commission completes its investigation.

Future Meetings

- January 15, 1999, in Burbank.
- March 26, 1999 in San Diego.
- May 13, 1999 in San Jose.
- July 23, 1999 in Orange County.
- September 17, 1999 in Burbank.
- November 5, 1999 in Sacramento.