



JOHNETTA PAYE ESQUIRE

ENTERTAINMENT

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It's fighting season on upcoming seasons of 'Being Mary Jane' ... in the courtroom



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**BLAVITY: DRAKE, SNOOP
LEARNED THE HARD WAY:
WHY RELEASING PRIVATE
CONVERSATIONS IS NOT
OK**



While Michael Ealy has made a killing (sometimes literally) as the crazy guy (“Their Eyes Were Watching God,” “For Colored Girls,” “The Perfect Guy,” “Sleeper Cell” and now “Secrets and Lies”), January 2017 will be the first time viewers will see if he’s gone “mad” as a new cast member in the [next season](#) of “Being Mary Jane.” For now though, “BMJ” fans know one person who is already mad: actress Gabrielle Union, the star of the show.

Union [filed a lawsuit](#) against BET on Tues., Oct. 11, due to a disagreement in the number of episodes that would be filmed per season. The complaint from Union is for breach of contract, reformation, negligent misrepresentation, promissory estoppel and declaratory relief. In the report released to Deadline.com, Union's legal representation states that BET would never produce more than 13 episodes per season. However, BET allegedly is trying to film 20 episodes back-to-back in a single season and "deprive Ms. Union of her agreed-upon compensation for the next two seasons of 'Being Mary Jane.'"

However, the tricky part is that Viacom, BET's parent company, has a form provision stating that the "Company shall order a minimum of ten (10) episodes and a maximum of twenty-six (26) episodes" per season. But BET's then-Vice President/General Counsel Darrell Walker was said to have assured Union's entertainment attorney Patti Felker that Union wouldn't be required to appear in more than 13 episodes per season regardless of Viacom's policy. If BET were to use Union's acting services for an optional, additional four seasons of "Being Mary Jane," she would've been "entitled to receive increased compensation."

According to IMDB, [Season 1](#) had eight episodes. [Season 2](#) had 12 episodes. [Season 3](#) had 10 episodes. By Season 4, Will Packer was brought aboard as an executive producer and Erica Shelton Kodish was recruited as the new showrunner. The problem, according to the lawsuit, is that Kodish did not want to be exclusively locked down to the show “for an indefinite and lengthy period of time and so that she would have the opportunity to work on other television programs after wrapping production of Seasons Four and Five.” This resulted in a plan of 10 episodes for Season 4 and 10 episodes for Season 5: a total of 20 episodes shot back to back.



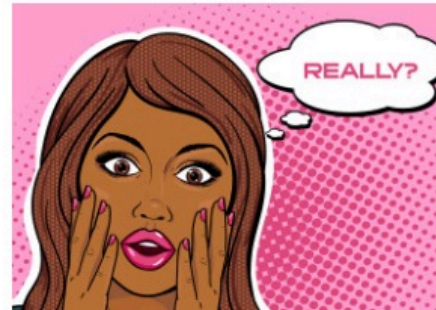
However, after Walker’s employment concluded with BET, a conversation was had between BET’s current Head of Original Programming Zola Mashariki and her manager Jeff Morrone about those back-to-back episodes and a request for a new scheduling proposal. And that’s where the gray area begins: the strange policy of a maximum of 26 episodes; no BET executives on

set to “immediately resolve any issues” regarding the series; the scheduling proposal apparently not being sent to all parties involved; and

scheduling proposal apparently not being sent to all parties involved; and potential compensations that the plaintiff (Union) believes would've been owed if she filmed each season separately with a break in between (\$150K per episode for Season 4, then \$165K per episode for Season 5). Of all of these contractual issues, the pay issue appears to be the biggest concern.

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This once again brings up the importance of why every single word of a contract matters before agreeing to film or coming aboard a project. The biggest problem was that regardless of producers coming and going, Union signed the contract with Viacom's policy.



the contract with Viacom's policy. So even though verbally executives may have told her it would never be in place, because it was not written into the contract in such a



way that only a maximum of 13 episodes would be filmed per season, Kodish's decision to tape episodes back-to-back by default leaves Union with the responsibility of filming back-to-back regardless.

If a contract contains boilerplate language that cannot be modified (in this case, Viacom's policy), then the artist or talent should seriously evaluate if they want to potentially be obligated to the boilerplate terms on the contract.

Typically most contracts contain an entirety clause, which stipulates the contract contains the complete agreement between the parties. In other words, the court will only look at the four corners of the contract and nothing else to determine the parties agreement. Any conversations Union had with BET executives prior to signing the contract would be excluded from the written contract under an entirety clause. It's important to make



from the written contract under an entirety clause. It's important to make sure the contract term reflects the parties' understanding because verbal representations can be excluded from the written contract, whether indirectly or on purpose.

Union can argue that the contract allows Viacom to order 26 episodes per season. Since all 20 episodes will not be a part of season 4, BET and Viacom are in breach of contract. A judge or jury will have to decide if BET breached the agreement and Union is entitled to the increase in pay she would have received if Seasons 4 and 5 of Being Mary Jane were shot separately.

Have more questions about actor agreements and contract negotiations?
Contact [J. Paye & Associates](#) today.

Shamontiel L. Vaughn contributed to this blog. Find out more about her at [Shamontiel.com](#).