



**Grievance and Contract Division
Semiannual Report
to the NWU National Executive Committee, National Executive Board,
and Grievance and Contract Division**

January 1 - June 30, 2015

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In Loving Memory of Susan Carol Hauser

*Supporting data is found in a separate Appendix, sent to members of
the
Grievance and Contract Division and available to others on request to
gcdcoordinator@nwu.org.*

GCD COORDINATOR'S REPORT

Overview

GCD members have a new reason to be proud of our accomplishments. A member survey conducted by the Boston chapter this winter showed that Boston members regarded “free assistance from the Grievance and Contract Division” as the top benefit of NWU membership (72%), and the top type of information they wanted was on “contract issues for their work (73%).”¹

Something new that we’re proud of: By the time you read this, our first webinar on e-book contracts will be in beta testing. We’re planning to show it at the Delegate Assembly (DA) in New York in August.

The first half of 2015 (1H15) started very slowly, but volume picked up substantially in June. We handled 76 new requests, plus a grievance continuing from the last half of 2014 (2H14). This compares with 75 new requests in 2H14 and 80 in the first half of 2014 (1H14). Of the 76 new requests, 54 came from members and 22 from non-members. Twenty-three of these requests came in June, and July seems to be proceeding at an equally healthy pace.

Demand for GCD services: The number of new grievances stayed even at 17. Contract advisements were down from 33 to 21. (They had also been slow in 1H14.) Member inquiries rebounded to 16 from an unusually slow 10 in 2H14. Non-member inquiries rose from 15 to 22.

Attracting new members: Of the 54 members requesting services, 22 had joined or rejoined within the preceding two months. Five of these were former members. Our retention rate over a one-year period stayed fairly even; 37.5 percent of members who joined for services a year ago are still on board, down a bit from 40 percent of those who joined in 2H13. **Tables 10 and 11** of the Appendix summarize these numbers.

How requests reach the GCD: Nine of the 76 requests were referred by national staff members or officers. Seven were referred through chapters. A whopping 13 were direct contacts with individual grievance officers (GOs) or contract advisors (CAs; collectively, GO-CAs). There seems to be a trend toward members appropriating a particular GO-CA as a personal advisor; we encourage this as long as the GO-CA is willing and the request is channeled through the coordinator in order to avoid overloading certain GO-CAs. Two arrived through our voice mailbox. Two were referred from the NWU-Book discussion list, with which we have great synergy. One came in through the website; we expect more such requests now that our new site is running with easy-to-use forms available. The remaining 42 requests arrived by email.

Performance history: An update of the numbers compiled for the latest six months shows that between May 1, 1991, when the first database entry was recorded, and June 30, 2015, the last day of the present reporting period, the GCD handled 6,944 requests for assistance. This number is artificially low because contract advisements only became part of the GCD portfolio in 1995 and the logging of inquiries (as opposed to grievances and contract advisements) did not begin until February 1998. And, of course, this work was going on long before the database was started. While dollar amounts may not be exact, we have records of having recovered \$1,567,706 for members during the life of the database.

Operations

Inquiries picked up and grievances stayed at the same level as in 2H14, while the number of contract advisements was down from 33 to 21. The types of cases also followed a different pattern. Nineteen book contracts were submitted for contract advice or grievance assistance, down from 25 in 2H14; six of these, an all-time high, were from subsidy presses or self-publishing firms and two were for electronic books.

Journalism contracts, which have been nearly extinct lately, made up the next largest category with five. Three cases dealt with collaborations, and three with performance media. There were no agent contracts – a first.

The complete list of contract types and frequencies appears in the Appendix as **Table 1**. Geographical distribution of requests is detailed in **Table 8**.

¹ Copies of the survey are available on request from gcdcoordinator@nwu.org.

Contract advisements

The lower number of contracts submitted for advisements, and the larger number of them coming from subsidy presses, lead us to wonder whether many members who self-publish their books don't think their contracts need to be reviewed. They do, as we'll discuss later.

Members requested full contract reviews in 12 of the 21 cases. In six instances they sought advice on specific questions. Three members wanted help in drafting contracts.

Concerns: Eight advisees were concerned about payment amounts, rates, and terms. Eight mentioned rights of various kinds other than copyright. (Members concerned with rights usually cite several of them.) Six had problems with indemnification/liability clauses, five with copyright, and four with exclusivity provisions.

Two members wanted advice after the fact. One wanted to strengthen the indemnification language in a contract that had already been signed. Another, who had agreed to contribute to an anthology, later wondered whether she could ask for a share of the royalties in addition to a fixed payment. It's hard to renegotiate such terms.

The list of concerns appears in the Appendix as **Table 2**.

Results: Eight advisees reported improved contracts. Two refused bad contracts. In six cases the writers were satisfied with our advice, although final results of their negotiations are unknown. Negotiations on two contracts are pending, as is the resolution of one of the cases where the member wants modification. One member, who had consulted a lawyer and wanted a second opinion from us, was sent back to the lawyer to ask his permission. Apparently she didn't get it.

Members continue to get valuable information from the Guide to Book Contracts, which we regularly send to every book contract advisee. But the last revision was done in 2007, and a lot has changed since then. We're hoping to be able to update some aspects of it to keep up with the rapidly changing industry, especially in the areas of e-books and self-publishing.

The complete list of results and their frequency appears in the Appendix as **Table 3**.

Grievances

Complaints: Nine of the 17 grievances dealt with nonpayment or late payment. Eight grievants complained that the other party failed to fulfill the contract. Four cited editorial abuse, and four dealt with termination issues. (Grievants may have multiple complaints.)

Two grievances dealt with online work that was obtained through an agency. The end users were supposed to pay the authors, with the agency taking a commission. So the agency was fairly aggressive in pursuing deadbeat clients, even offering an arbitration procedure – which somehow didn't apply in either of our cases. One member was miraculously paid by the client; the other, who found she was dealing with a shell company, withdrew the grievance. This is one of the new content farm models that keep sprouting up. Another is exemplified by a company that offers contract work but imposes impossible deadlines and terms. One of our members walked away from that one, deciding that a grievance to collect a kill fee wasn't worth it: "I knew they were on the border of legality but they are complete jerks."

We're pursuing the case of a member who did extensive research for an article in a prestigious publication, only to have the article assigned to another writer. This often happens; but in most cases it happens at the proposal stage and the writer has no recourse, since you can't protect an idea. We're hoping that there's enough documentation in this case.

A member was caught in the aggregation web after contributing to a nonprofit blog, then finding her work reproduced on several other sites. After consulting with us she decided to go after the offender that was profit-making, and quickly collected. Often you can get what's owed to you simply by asking for it.

An author was faced with a seemingly impossible task: to reclaim the rights to her book from a publisher that had gone into bankruptcy. She found the right people to contact through extensive research into court documents.

A first: A grievance against a publication that's found only on Facebook.

Grievance officer interventions: This list is incomplete since most of the grievances came in toward the end of the half-year, and some are still being actively pursued. As usual, most interventions consisted of advice to the grievants. Seven GOs helped grievants with the demand letter that often gets results. Two wrote to the publisher (one letter was returned) and one called. We've added a new category: Research on adversary, which was done in three cases. Our GOs have been able to assist grievants by providing background on the bad guys. There would be fewer grievances if writers researched potential publishers and clients before becoming involved with them. We welcome members to ask our help in this. Our database has thousands of case histories, and we know about many other sources.

The full count of grievance issues appears in the Appendix as **Table 4**. A description of GO interventions is shown in **Table 5**.

Results: We're happy to report five wins, three of them negotiated by the members themselves after consulting with GOs. Six grievances plus the carry-over grievance remain pending, with hopes for success. One member, the one dealing with the agency, got her money after being assigned a GO but before the GO began to work with her. Those are our favorite kinds of grievances. Five grievances were withdrawn, three of them because they didn't meet the criteria for a grievance. That usually means that while the bad guy may have treated the member poorly, s/he hasn't done anything proscribed by the contract or industry practice. The member whose grievance has been ongoing won another \$200, and another member was released from a commitment to pay a \$600 professional fee.

Results are categorized in **Table 6**.

Inquiries

There were 16 questions from members, up from 10 in the last two half-year; and 22 from non-members, up from 15 in 2H14. It's good to see the numbers going back up. We hope we'll inspire non-members to join, and always welcome opportunities to help members. We couldn't do much for the non-member who wondered how he could collect \$45 for the three articles he'd agreed to write for a person named "Jane Doe." But we were able to offer some tips to the one who reported having been scammed by a so-called literary agent. And we were especially pleased to hear from the non-member who said she'd been advised to negotiate her contract but "I have the feeling a first time author who is accepted by a small publisher would only make a fool of themselves to attempt to negotiate anything." We assured her quickly that she was totally wrong.

The most provocative inquiry in 1H15 was from a non-member, who later joined. He had received a royalty statement from CreateSpace, Amazon's self-publishing company, that indicated he was receiving royalties of one cent per book. We asked to see his contract and were rewarded with a bewildering document filled with links to CreateSpace's website. Buried behind one of those links was a royalty calculator, which a representative cited when the author asked about his payments. It raised our consciousness about the alleged simplicity of self-publishing. More under "Issues."

Ten non-member inquiries would have been grievances if brought by members, and six would have been contract advisements. Seven inquiries in total dealt with business practices and prices. Three were questions about particular publishers or agents (which we hope more people will ask), two about copyright, and two about what's been a fairly rare topic until now – the function of literary executor. Two people provided information on questionable practices by websites, and one reported on misdeeds by a content farm. We enter that information into our database so it will be available to others who inquire.

A full list of inquiry topics is in **Table 7**.

International cases

Three grievances were brought by writers living outside the U.S., two of them by members of our British affiliate the National Union of Journalists. We did one contract advisement for a Canadian member and one for a U.S.-based member dealing with a foreign publisher, and fielded an inquiry about a foreign publisher. There were four inquiries from non-members living outside the U.S. We're delighted to help overseas members and affiliates in dealing with U.S. publishers, but believe that dealings with foreign publishers can generally best be handled by organizations in those publishers' countries. International cases are documented in **Table 9**.

Publishers and other business entities

A list of publishers and other entities with which our advisees had contracts appears in the Appendix as **List 1**. A list of entities against which grievances were filed appears as **List 2**. Names of individuals are omitted, and neither of these lists is all-inclusive.

Issues

We continue to make slow progress on some of the problems confronting writers. And new ones keep appearing.

The Authors Guild's recent stand on e-book royalties. As we trust everyone knows by now, we've been campaigning since 2010 against publishers' efforts to reduce electronic book royalties from the traditional 50 percent to 25 percent or less, and sometimes down even further to the level of print royalties. The 2011 DA approved a resolution authorizing us to take action on this situation, the 2013 authorized a series of webinars to educate members, and at the 2015 DA the first webinar will see the light of day.

On June 17 of this year, the Authors Guild announced a campaign advocating 50 percent as the standard royalty for e-books. On July 9 it elaborated in a release titled "Half of Net Proceeds Is the Fair Royalty Rate for E-books." We hope to take advantage of the spotlight now shining on the issue by collaborating with the Authors Guild on this campaign. We are working with other writers' organizations to support the effort.

Publishers still squeezing authors. We heard from a member who has published several books with a well-known press. To her surprise, the terms were less favorable than in previous contracts. Royalties for e-books, formerly 50 percent, were to be at the same level as print royalties. Royalty statements, previously sent twice a year, were to be sent once a year – as if Bob Cratchit were turning them out with a quill pen. When the member questioned these changes, the publisher blamed the "economic downturn." Funny - there's public information available suggesting that this publisher has just had two very good years, as have many of its competitors.

Self-publishing. We've been focusing on the sleight of hand of expensive subsidy presses, which are still thriving as of this report. But dealing even with straightforward and presumably honest channels such as Amazon's CreateSpace and Ingram's Lightning Source requires vigilance. Our new member who reported receiving a penny per book in royalties from CreateSpace is a case in point. It's not that these people are out to cheat you. It's just that to get all the information you need from them, you have to make extraordinary efforts. This is a wake-up call. Ask every question you can possibly think of, comb every corner of the website, and don't sign anything until you're totally satisfied that you know everything that's going to happen. Contact us if you're unsure of any aspect of your negotiations with these companies.

Pricing. The CreateSpace incident shows us the importance of pricing. But there's another wrinkle. Publishers won the right to set prices on Amazon, but the battle isn't over. A member reported that her e-book had been priced outrageously high. Authors traditionally have had no input on traditional publishers' pricing of their books. But maybe they should.

On yet another front, Amazon has been in the headlines again for making yet another change to its e-book pricing model. It wants to charge borrowers for the pages people actually read, not the books they take out. There hasn't been much talk about the privacy aspect, but are you comfortable knowing that someone can tell how much you read of that erotic novel or that book by a politician?

Content farms. New iterations keep appearing. In addition to the proliferation of pay-per-click models, we're seeing publishers who mass-produce whole books and firms that churn out educational materials. They can be recognized by the sweatshop working conditions they force on their writers. No writer should be desperate enough to accept them. Please let us review your proposed contract before you sign it. It may be difficult – often you've signed up just by clicking – but don't jump into a bad situation.

People

We mourn the passing of Susan Carol Hauser, an extraordinary human being and a valued grievance officer for four years. Susan's industry knowledge, experience, insight, and willingness to pitch in to solve difficult problems made her invaluable. We're proud of our many talented and hard-working people, but Susan will be sorely missed.

Our roster is now at 20. Eighteen GO-CAs are active on grievances or contract advisements. Everyone jumped in to help with the influx of cases that started to arrive in June, so we've been able to handle the load. Thanks again to all of the amazing GO-CAs who dropped everything to serve our membership.

A table showing coverage and use of GCD services by chapter is in the Appendix as Table 8. Overall utilization rates are described in Table 11.

Conclusion

Toward the end of this half-year we began to see more volume in requests. We hope it continues, especially in contract advisements. (We never want more grievances.) We hope the decline hasn't been due to our members getting fewer contracts. We hope they'll get more, and will consult us on self-publishing agreements as well as traditional ones.

Our first webinar on e-book contracts will be unveiled at the August DA. We're committed to doing two more in the series, and would like to hear from you on other topics that we should address. We'd also love to hear from graphic artists who would like to volunteer their time to make the products more dazzling.

Many thanks once again to National Grievance Officer Amy Rose, National Contract Advisor Susan E. Davis, and Assistant National Contract Advisor Paul MacArthur. Their creative leadership and tireless efforts have kept us in the forefront of activities that improve conditions for writers, and make survey respondents point to grievance assistance and contract advice as the principal benefits of NWU membership.

Special thanks to President Larry Goldbetter for his continuing support. Thanks also to Senior Advisor Mike Bradley, National Book Grievance Officer Phil Mattera, and all of our incredibly brilliant and hard-working GO-CAs who keep going the extra mile for our members.

Compiled by Barbara Mende, Coordinator, Grievance and Contract Division, July 2015. Please direct questions and comments to GCDCoordinator@nwu.org.

Semiannual Report to the NWU National Executive Committee, National Executive Board,
and Grievance and Contract Division
from Amy Rose, National Grievance Officer

July 2015

Webinar Coming Soon: “E-books and E-rights: What Authors Need to Know”

It has been a long slow process, but at last the first NWU webinar, “E-books and E-rights: What Authors Need to Know,” is ready to beta-test at the upcoming NWU Delegate Assembly.

This informational webinar program is overdue. More and more NWU members are coming to the GCD with complaints of publishers breaching contracts or infringing copyright with respect to e-book publication. Authors may have trouble determining whether or not they are being paid according to contract terms. Some publishers treat e-books just like print books, offering a royalty rate far below the 50 percent typically offered for subsidiary rights. Others regard e-book transactions as sales, rather than licenses, and pay only the print-book royalty. Contracts may be confusing, and royalty statements are often mystifying.

The three projected webinars will cover all of these issues. The first webinar addresses the basics of copyright and electronic rights, sale vs. license, list price vs. net price, and tips for negotiating favorable e-book terms, whether in a contract amendment a publisher offers in order to publish your existing book as an e-book or in a new contract which includes e-book terms.

One challenge of this project has been our difficulty developing effective graphics for the slides. Nobody on the development team has the expertise we need, and our calls for volunteer help have gone unanswered. The version to be presented at the upcoming DA requires the graphics to be developed before it can be effectively used. I hope somebody will come forward and offer assistance.

It is through lack of awareness and understanding that authors end up with unfavorable e-book contracts (or contracts of any kind). Our goals are to (1) provide essential information about the negotiating and publishing of e-books, and (2) promote the exercise of due diligence by authors in researching and negotiating their contracts *before* they sign.

Perils and Pitfalls of Self-Publishing

It becomes increasingly clear that self-publishing is not a simple or straightforward process. For example, a self-publishing contract with services such as Amazon or Ingram may contain hot links to online terms and conditions to which the author agrees when he or she signs the contract. Without a clear understanding of those terms and a grasp of the pricing and/or business model, authors may end up very disappointed with their earnings. Perhaps a webinar on self-publishing should be added to our curriculum.

Remembering Susan Carol Hauser

We are much saddened by news that Susan Carol Hauser passed away early in July. Susan trained as a grievance officer in 2011, and she went on to handle her cases with persistence and panache. She will be missed. Our thoughts are with Susan’s family, friends, and community.

Congratulations and Thanks

My warmest congratulations and sincere thanks go to the grievance officers and contract advisors who provide steady and helpful support to our members. As always, I tip my hat to my GCD colleagues: NCA Susan, Assistant NCA Paul, and Coordinator Barbara.

If anyone wishes to discuss this report, please feel free to contact me at 313-882-5183 or nwugoca1@earthlink.net.

Semiannual Report to the NWU National Executive Committee, National Executive Board,
and Grievance and Contract Division
from Susan E. Davis, National Contract Advisor

July 2015

First E-book Webinar

After the 2013 Delegate Assembly approved a series of three webinars as part of the NWU's ebook royalty campaign, the joint Book Division-GCD committee — Book Division Co-Chair Edward Hasbrouck, Assistant National Contract Advisor (ANCA) Paul MacArthur, GCD Coordinator Barbara Mende, NGO Amy Rose, and I (NCA and Book Division Co-Chair) — held a series of conference calls beginning in February 2014. We focused on the topic: “What members need to know to understand terms about e-books in their current contracts and how to make sure they are getting paid properly and/or are able to understand their royalty statements.”

On May 15 we presented the webinar for the first time to 1st VP Ann Hoffman and GCD Senior Advisor Mike Bradley (Larry was not available). Based on their feedback, webinar writer Amy has revised the text with input from the rest of the committee. We are preparing to present a beta test to the Delegate Assembly in August.

Time to Update Guide to Book Contracts

While developing the webinar, it has become obvious that the text on e-books in the current *Guide*, as well as on other topics, is terribly out of date and must be revised. A thorough review and update of the *Guide* is required. However, one of the many benefits of creating the webinar is that that material can be easily recycled into an addendum to the *Guide* until funds can be allocated for the thoroughgoing revision. Therefore I suggest we break the revision process into three phases: 1) create a special e-book addendum to the *Guide*; 2) do a thorough review of the *Guide* to assess the extent of the revision; and 3) write the final revision. I volunteer to do the addendum, for a small fee, in consultation with other members of the webinar committee and a final review by National Book Grievance Officer Phil Mattera and Mike Bradley.

Contract Workshops

Over the years several GCD members have given contract workshops, including the *Guide*'s original co-author Phil, Paul, Barbara, and I and contract advisors Ken Wachsberger and Ian Newhem. This spring Paul gave a contract workshop at the annual meeting of the American Association of University Professors, Karen Ford represented the NWU on a panel discussion about work-for-hire contracts at the Indiana Chapter Conference of the American Medical Writers Association, and I gave a workshop on copyright and preventing piracy of digital work for the New York Chapter. These workshops are useful to educate writers, both members and non-members, and to recruit new members. Providing this information, which most writers don't have easy access to, is a union resource that is especially important in this evolving digital revolution.

I encourage all CAs to educate members in their chapters and/or give workshops at local writers' conferences and events they attend. Chapters should be encouraged to host these workshops where GCD members share their expertise either in person or via Skype (or other such technology). If CAs are interested in doing workshops, please contact me (sednyc@rcn.com).

With Appreciation

All GCD members deserve huge thanks for providing the valuable, thoughtful guidance and support members need and rely on. You are a strong reason new members join the NWU month after month. Working closely with Amy, Paul, and Barbara is an ongoing pleasure. The division relies on Barbara's expert organizational skills, wealth of experience, and delightfully witty touch to stay firmly on track.

If anyone wishes to discuss this report, please feel free to contact me at 212-989-6756 or sednyc@rcn.com.