



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

July 1 - December 31, 2015

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***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

Watch for our first webinar on e-books and e-rights. It's finally ready for prime time. Check the NWUletter for details.

In the second half of 2015 (2H15) the GCD handled 63 new requests, plus two grievances continuing from the first half of 2015 (1H15). This compares with 76 new requests in 1H15 and 75 new requests in the second half of 2014 (2H14). Of the 63 new requests, 52 came from members and 11 from non-members (down from 22).

Demand for GCD services: There were 13 new grievances, down from 17 in 1H15. Contract advisements were up from 21 to 25. Member inquiries went from 16 to 14. The drop in volume from the last half year was almost entirely due to the drop in non-member inquiries: They went from 22 to a record low 11. Furthermore, no non-members who made inquiries subsequently joined.

Attracting new members: Of the 52 members requesting services, 20 had joined or rejoined within the preceding two months. Four of these were former members. Our retention rate over a one-year period went up a bit; 38.9 percent of members who joined for services a year ago are still on board, contrasted with 37.5 percent of those who joined in 1H14. **Tables 10 and 11** of the Appendix summarize these numbers.

How requests reach the GCD: Twelve of the 63 requests came in through the website form – at least that's how many we received that way. Unfortunately the form doesn't always reach its destination. It would work well if it did. Five of the 63 requests were referred by national staff members or officers. Six were referred through chapters. Eight, an unusually large number, came in on the phone. Five were direct contacts with individual grievance officers (GOs) or contract advisors (CAs; collectively, GO-CAs). One came in from the UK's National Union of Journalists (NUJ), with which we have reciprocity. The remaining 27 requests arrived by email.

Performance history: We've reached the 7,000 mark. Between May 1, 1991, when the first database entry was recorded, and December 31, 2015, the last day of the present reporting period, the GCD handled 7001 requests for assistance of all kinds. 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 \$1,569,406 for members during the life of the database.

Operations

As noted, the drop in non-member inquiries from 22 to 11 accounted for the lower numbers. Grievances were down by four (to 13) and contract advisements were up by the same amount (to 25). Member inquiries were down by two (to 14),

The types of cases continued the 1H15 trend. While the largest category of contract type was still book (unspecified) with 10, the second largest for the second time was books self-published or produced by a subsidy press, with six. Again we had five journalism contracts - also a recent phenomenon after we'd seen very few in 2014. There were four academic press contracts, two for collaborations, two with agents, two for work-for-hire, and two related to screenwriting.

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

Contract advisements

Members requested full contract reviews in 15 of the 25 cases. In six instances they sought advice on specific questions. One member wanted help in drafting a contract. In three cases the requests were withdrawn, apparently because the contracts failed to materialize.

Concerns: As usual, the strongest concern – voiced by 11 advisees — was payment amount, rates, and terms. Eleven advisees had questions about various kinds of rights, excluding copyright. (Most advisees had several

concerns, and most who were concerned about rights mentioned several of them.) Termination and rights reversion clauses, arguably the most important clauses in a contract, came up in six advisements. Five were concerned with indemnification and liability clauses, and five with editorial control. Costs or required expenses, a prime concern of authors who self-publish or work with subsidy presses, came up four times. So did e-book issues, mainly centering around a publisher's desire to nickel-and-dime authors by paying e-book royalties at the same rate as print royalties. If you're unfamiliar with these issues, be sure to catch our webinar, which has been completed and will be available soon.

Four advisees had questions about copyright, four about e-book issues, and three about option clauses that asserted rights to an author's future work.

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

Results: Nine advisees reported improved contracts. Eight refused bad contracts. This surprising number reflects several subsidy-press contracts where the costs or other constraints were unreasonable. In one case a publisher withdrew the contract offer after the member asked whether she could negotiate, without even knowing what items she wanted to negotiate.

In two cases the writers were satisfied with our advice, but final results were unknown. One member decided to consult a lawyer.

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

Grievances

Complaints: Eight of the 13 grievances dealt with nonpayment or late payment. Three grievants complained that the other party failed to fulfill the contract. Two cited editorial abuse, two had trouble with royalty statements, one cited infringement, and one wanted credit for her work that had been reused. (Grievants may have multiple complaints.)

Two of the non-payment grievances were from *Heart & Soul* writers, to whom payments promised in the settlement hadn't been made. A third joined them in 2016. As we write, the grievance officer has been told that H&S's refinancing is supposed to close any minute. Let's hope.

A member claimed that her poem had been used in a greeting card. But while the sentiments in both pieces were similar, the words weren't, and the card company could have come up with the concept without seeing the member's work. It may be unfortunate that there's no protection for ideas (as opposed to wording) this side of patents, but that's the way it is. See "Results," however, for a case that was so well documented that our member had to win.

We've been working for months on the case of a British journalist, referred by the National Union of Journalists, against a fly-by-night publisher that keeps changing identities and locations. There are a lot of such cases. Usually the promised payment is big enough to entice writers so that they don't do their homework in advance. We can't emphasize this enough: You have to research a prospective publisher, agent, or client thoroughly before investing time in a gig.

A member alleged that her publisher was manipulating the price of her book in such a way that Amazon wouldn't list it. She managed to negotiate a solution, but complaints about pricing are becoming more frequent. Another claimed that his publisher had gone back on his agreement to publish his book because it became politically sensitive. You can't force a publisher to publish a book. All you can do is demand compensation, which our member chose not to do.

Grievance officer interventions: This list is incomplete since some grievances are ongoing. Eleven GOs advised the grievants. Four helped them with demand letters. Phone calls and emails were made in three cases, plus two cases that were carried over from 1H15. In one of these cases the GO went to extraordinary lengths to help a member gain release from a contract with a vanity press that had failed to honor its terms. These included filing complaints with government agencies in the publisher's home state. Unfortunately the case is still open.

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

Results: The grievance that keeps on giving was filed in 2014, and the GO is still collecting for the member. Another \$200 came in toward the original \$1,750 debt, with the last \$350 received in March 2016. We have the perseverance of star grievance officer Jerry Richard, aided by two Writer Alerts that we posted on our website and publicized, to thank for that. The debt got as large as it did because the writer continued writing for the offending publisher even after he dragged his feet on paying her. Please, journalists, don't continue to work for people who don't pay you when they're supposed to.

Under the skilled management of National Contract Advisor Susan E. Davis, we collected an \$800 kill fee on the grievance that was opened in 2H15 against a prestigious magazine that tried to hand over our member's ideas and research to another writer. The magazine had originally offered \$250. In addition, it agreed not to assign an article on that topic to another member for six months. This case went far beyond the theft of ideas. The member had put in an incredible amount of work in researching the topic, for which the \$800 only barely compensated her.

Four current grievances were won by members who negotiated after consulting with our GOs. One of these had continued to write a column before she was paid for her previous work or even offered a contract, and stopping helped her to collect the \$500 she was owed. Another, trying to collect for a magazine article, was told, "As one of the very few publications that actually respects writers enough to pay them for their submissions I must take issue with such an aggressive and short sighted tactic to encourage payment of \$150.00." But the member got his money.

All in all, members collected \$1,650 during 2H15.

Results are categorized in **Table 6**.

Inquiries

There were 14 questions from members, down from 16 in the last half-year; and 11, from non-members, down a lot from 22 in 1H15. We're disappointed that fewer non-members contacted us because we like to try to help them and encourage them to join.

Most inquiries, as usual, regarded business practices, such as what stylebooks are acceptable and what kind of disclaimer to use on a website. We got some very intriguing questions, some of which crossed the boundary into the kind of legal advice we can't give, e.g., "If I committed a minor crime years ago and mention it in a memoir, can the police come after me?" Two members asked about media perils insurance, which we've tried to offer and can't because it's just not available at reasonable group rates. We were asked about deciphering royalty statements. (We have people who will look over your statement and help you make sense of it.) As always, we were asked about permissions. (As always, our reply was, "Get them! No exceptions.")

A former member wanted to get out of an old contract with an old subsidy press. A photojournalist believed that his concept had been ripped off, and we had to tell him what we've told many other people: you can't copyright a concept. A journalist based in Egypt wanted to know where he could get battlefield training — not within our purview.

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 a 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

We've been handling an ongoing grievance for an NUJ member, we responded to three inquiries from non-members outside the U.S., and we helped a member with a contract from an overseas agent. Generally, we're glad 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.

E-book royalties. Even as the Authors Guild has joined us in calling for 50 percent as the standard royalty rate for e-books, publishers are becoming more stubborn in trying to force authors into accepting the same royalties as for print books. We have completed our webinar designed to educate writers on the subject, and are now making arrangements to roll it out.

Subsidy presses. Some of them present themselves as self-publishing alternatives. Give us a few thousand dollars, they say, and you won't have to worry about layout or editing or promotion. The trouble is that often they don't worry about any of them either. We keep receiving complaints not only about costs, but also about the poor quality of the products and the failure to support authors in even such simple tasks as delivering books to book tour stops. Others present themselves as conventional publishers who just want you to make an investment in your book because it's outside their mainstream market or because it's part of a pioneering effort. They use such buzzwords as "collaborative publishing." The fact that several of them now belong to Penguin Random House and other traditional publishers makes the picture even more confusing. We're working on updating our materials on self-publishing as authorized by the 2015 Delegate Assembly, but it's a huge job because it's such a huge market. Meanwhile, although they present their contracts as boilerplate and strongly imply that these contracts can't be changed, it's critically important for members to have our advisors review these contracts. And, after they are signed, for members to be vigilant in making sure that publishers honor them.

Legalese. Non-competition clauses are turning up more frequently in work-for-hire contracts, and in 2H15 we encountered a few with non-disparagement clauses. They say you can't speak ill of the client who didn't pay you or made unreasonable demands on you. They used to be found mainly in severance agreements. Naturally, you shouldn't agree to one unless it's binding on both sides.

A member called our attention to a literary agent who accepted work online, but only after you clicked your approval to a clause that absolved the agent of any liability if your material wound up in the wrong hands. We're often asked how authors can protect their book proposals before submitting them to publishers or agents. We advise registering them with the copyright office. Now it appears there's a reason for concern.

Attention to freelancers' rights. This item is all good news. The NWU has been working with the Freelancers Union and others to promote legislation in New York City that would force employers of freelancers to give them contracts providing for payment within 30 days.

Closer to home, sites such as Who Pays Writers (whopays.scratchmag.net), WordRates (wordrates.com), and Pay Me Please (www.beaconreader.com/pay-me-please) are providing platforms for journalists to post information not only on rates of pay but on which publishers pay promptly and which don't. Contribute to them if you can, and consult them before you contract for any substantial journalism project.

Finally, we've discovered two collection agencies that specialize in collecting for writers and other freelancers: Freelance Collection (<http://www.freelancecollection.com>) and Indepayment (<http://www.indepayment.com>) - and if we've found two, there must be others. If you're not being paid, we urge you to try our grievance process (<https://nwu.org/grievance-and-contract-division/grievance-assistance/>) first, because it's free to members and it often works. But it's reassuring to know there are alternatives just in case.

People

Our roster is now at 19. Most of our GO-CAs are active on grievances or contract advisements. They continue to do amazing work under extreme pressure, and to exhibit incredible dedication and creativity.

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

This half-year was slower than usual in terms of requests, mainly due to fewer non-member inquiries. But we feel that members could also use our services oftener. Yes, we want you to contact us when you don't get paid; but don't wait for that. We'll be happy to review any contract with a publisher, website, work-for-hire client, self-publishing provider, editor, illustrator, or collaborator. Don't forget that last one. It doesn't only apply to ghostwriting. Two or more people collaborating on a book often come to us for advice on the publishing contract, but neglect to sign an agreement with each other. Then later they disagree about terms, or one wants to do a second edition when the other wasn't, or any number of incidents occur that come up in grievances. And don't forget to bring us your questions about industry practices or hypothetical contract terms. If we can't answer them, we'll try to find someone who can.

As noted, our first webinar on e-book contracts is completed. We think it's full of useful information and well worth seeing. Watch for announcements. We're planning two more webinars on e-books, and we welcome your input on topics for future webinars.

Many thanks once again to National Grievance Officer Amy Rose, National Contract Advisor Susan E. Davis, and Assistant National Contract Advisor Paul MacArthur. They continue to lead us wisely and creatively in our efforts to improve conditions for writers, individually and collectively.

Special thanks to President Larry Goldbetter for his continuing support. Thanks also to Senior Advisor Mike Bradley, National Book Grievance Officer Phil Mattera, and our extremely talented and devoted GO-CAs who make superhuman efforts to help our members.

Compiled by Barbara Mende, Coordinator, Grievance and Contract Division, March 2016. 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

March 2016

E-books and E-rights: What Authors Need to Know

At long last, the NWU webinar, “E-books and e-rights: What authors need to know,” is ready for online presentation. The webinar presents an overview of the basics of e-book publishing: a brief background, e-books in book contracts, licenses vs. sales, copyright, payment, and negotiation tips. It is slated to last about one hour, allowing time for questions and discussion.

The program was presented on a trial basis at the NWU Delegate Assembly in August of 2015. The presentation was well received, and several helpful suggestions came out of the following discussion.

The webinar is the work of five NWU officers: Sue Davis, National Contract Advisor and Book Division co-chair; Edward Hasbrouck, Book Division co-chair; Paul MacArthur, Assistant National Contract Advisor; Barbara Mende, GCD Coordinator; and me, National Grievance Officer, who was hired to write the webinar.

The webinar development process was protracted and difficult, with long delays between meetings since team members were often traveling or busy with other work. But all in all the process worked very well. The five of us managed to cooperate and collaborate very productively. I am very grateful to Sue, Paul, Edward, and Barbara for their expertise, persistence, and enthusiasm. I also want to give a shout-out to my neighbor and friend of the union, Belva Davis, for her help with the graphics.

I propose to launch the webinar as soon as possible, and to invite all GO-CAs to participate early on.

I hope we can move ahead soon and begin development on the second e-book webinar: “Skills and techniques for negotiating the best possible contracts for future e-books.” A third, on the pros and cons of self-publishing e-books, will follow.

Heart and Soul Redux

Since 2011, the NWU has worked with some 20 writers and editors for the magazine *Heart and Soul* who were not paid for their work. The magazine claimed financial difficulties. There were changes of leadership and the magazine constantly deferred resolution, claiming not to have the money.

In early 2012, thanks to help from NWU President Larry Goldbetter and the UAW legal staff, four NWU members in a group grievance were paid about \$9,000 after months of waiting. In the spring of 2012, 12 additional *H&S* workers joined the group grievance. Three of them were finally paid a total of about \$5,200. The others were not.

As *H&S* balked again, Larry and the UAW once again applied pressure. The magazine agreed to make progress payments to fulfill its obligations. It was early in 2014 that the 12 grievants were finally paid, making the total funds recovered from *H&S* reach \$125,000.

Now, in 2016, three additional and former *H&S* employees have come forward, claiming that *H&S* still owes them a total of about \$50,000. Two had signed settlement agreements for progress payments, but neither has received any payment at all since April 2015. A third was owed for an article she wrote and which was published in *H&S* during the summer of 2012, but she has never been paid for it.

I have been in touch with an *H&S* financial manager Wil Adkins, who has told me repeatedly that the company’s refinancing was underway and soon to be settled. At this point in time, we are still waiting to hear. Mr. Adkins claims that the company will pay everybody what it owes them. Unfortunately, we are still waiting.

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 nwu1ngo@gmail.com.

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

March 2016

First E-book Webinar

After the 2013 Delegate Assembly approved a series of three webinars for the NWU's ebook royalty campaign, the joint Book Division-GCD committee (see names in Amy Rose's report) held a series of conference calls from February 2014 to February 2016. Final revisions were needed after Edward, Barbara, and I presented a beta test to the Delegate Assembly last August. We resolved all text issues in February, and thankfully Amy enlisted her graphic designer neighbor Belva Davis to make the illustrations visually cohesive in March. We are finally ready to launch the webinar as soon as we find the appropriate technology!

Time to Update Guide to Book Contracts

While developing the webinar, it became obvious that the text on e-books and other topics in the current *Guide to Book Contracts* is sorely dated and needs to be revised. One of the many benefits of creating the webinar is that material from the presentation can be easily recycled into an addendum to the *Guide* until funds can be allocated for a comprehensive revision. The revision process can be broken down into three phases (each with an hourly wage): 1) create an e-book addendum to the *Guide*, which would require a few hours of work; 2) do a thorough review of the *Guide* to assess the extent of the revision, which would require a few hours of work; and 3) write the final revision, which would require a number of hours of work, which cannot be calculated now. I volunteer to do the addendum, which I hope other members of the webinar committee will review gratis. I propose that both Paul and I review the *Guide* and agree on which topics need revision. We can schedule the revision when funding is either secured with a grant or budgeted as part of union expenses.

Contract Workshops

Contract workshops are a vital way to educate members and recruit other writers to join the union. Providing information that most writers don't have easy access to is a union resource that is especially important in this evolving digital revolution. In the past workshops have been given on a regular basis by Paul and me, though presenters have included the *Guide*'s original co-author Phil Mattera, Barbara, and contract advisor Ken Wachsberger. I gave a workshop on copyright and preventing piracy of digital work at the New York Chapter's annual conference in October.

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

Thanks to all GCD members for providing the valuable, thoughtful guidance and support members need and rely on. You are a big reason new members join the NWU month after month. Working closely with Amy, Paul, and Barbara is such a pleasure. Barbara's expert organizational skills, wealth of experience, and delightfully witty touch keep the division firmly in gear.

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