



# Grievance and Contract Division

## Semiannual Report

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

July 1 - December 31, 2014

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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](mailto:gcdcoordinator@nwu.org).*

# GCD COORDINATOR'S REPORT

## Overview

The second half of 2014 (2H14) continued slow in volume, but the composition of our requests was different. We handled 75 new requests, plus a grievance and a contract advisement pending from the first half of 2014 (1H14). This compares with 80 new requests in 1H14 and 84 requests in the second half of 2013 (2H13). Of the 75 new requests, 60 came from members and 15 from non-members.

**Demand for GCD services:** The number of grievances rose from 14 to 17. Contract advisements were up from 25 to the typical pace of 33. The big drop was in member inquiries, which went from 24 to 10. Non-member inquiries dipped slightly, from 17 to 15.

**Attracting new members:** Of the 60 members requesting services, 22 – 36.7 percent, slightly lower than in 1H14 – had joined or rejoined within the preceding two months. Our retention rate over a one-year period rose to its highest point since we've been tracking it; 40 percent of members who joined for services a year ago are still on board, up from 35.7 percent of those who joined in 1H13. **Tables 10 and 11** summarize these numbers.

**How requests reach the GCD:** Eleven of the 75 requests were referred by national staff members or officers. Five were referred through chapters. Eight were direct contacts with individual grievance officers (GOs) or contract advisors (CAs; collectively, GO-CAs). Three came in through our voice mailbox. The remaining 48 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 December 31, 2014, the last day of the present reporting period, the GCD handled 6,879 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 \$1,566,256 for members during the life of the database.

## Operations

The lower number of requests was entirely accounted for by a drop in member inquiries, from 24 in 1H14 to 10. The number of contract advisements rebounded from 25 to 33 and we fielded 17 grievances, up from 14. Whereas only 19 book contracts were submitted for contract advice or grievance assistance in 1H14, we heard from 25 book authors, of whom three had academic contracts and three were working with subsidy presses. The next largest category of contract was work-for-hire writing and editing, plus two online contracts where the members were unwilling to accept work-for-hire terms. Four cases dealt with collaborations. Sadly, there was only one agent contract. Agents are still hard to find.

The acquisition of Globe Pequot Press by Rowman & Littlefield brought us some business, in the form both of new contracts R&L was offering to authors and R&L's efforts to clear up past grievances. That was generally, although not always, good news.

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***

In the words of New York member Marilyn A. Gelman, "This contract business is like childbirth; time passes, I forget the pain, and then I get pregnant again!!" Fortunately, requests for contract advice are looking up.

Members requested full contract reviews in 19 of the 33 cases. In ten instances they sought advice on specific questions. Four members wanted help in drafting contracts.

**Concerns:** Twenty advisees mentioned rights of various kinds other than copyright. (Members concerned with rights usually cite several of them. Eleven members asked about them in 1H14.) Payment amounts, rates, and terms were in second place, with twelve advisees concerned about them. Nine members had problems with copyright, eight with indemnification/liability clauses, and six each with option clauses and reversion of rights.

We hadn't heard much lately about retrospective rights, where writers are required to sign over all rights to anything they'd ever written for a publication. Newspaper chains often include such a clause in their contracts, and our members are either quietly signing them or (we hope) walking away. We just heard from a writer who had done a great deal of work for an online publication, and was suddenly hit with that clause. To her credit, she walked away.

We were asked to review a member's contract with a publicist, and to advise a member who had an offer from an aggregator for the archives of a venerable publication, which he controls. This is happening more frequently as our members are running their own businesses. Another example appears in the grievances section below.

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

**Results:** Thirteen advisees reported improved contracts. Eight refused bad contracts. We're especially proud of members who do that, when so many writers want to be published badly enough to sign anything. In seven cases the writers were satisfied with our advice, although final results of their negotiations are unknown. Two cases were withdrawn because the transactions didn't materialize.

One member looked at her contract, reviewed our Guide to Book Contracts, and decided that the agreement she'd been offered was too awful to sign. She turned it down without even consulting the contract advisor we'd assigned to her. That's a big mistake that many members make. They don't understand that contracts are made to be negotiated, and that many writers manage to improve seemingly heinous agreements simply by requesting changes. Another member reported, after he managed to rewrite the contract from hell to his satisfaction, "You were right on target when you said publishers will negotiate." Writers swear by contract advisor Ken Wachsbarger's classic article, "Negotiating Contracts Over the Phone," recently revised by Ken and Assistant National Contract Advisor Paul MacArthur. Look for it at <http://nwu.org/sites/nwu.org/files/negotiatingoverphone.pdf>.

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

## **Grievances**

**Complaints:** Infringement of various kinds made up the most frequent complaint (six cases) with nonpayment or late payment tied with termination issues at four, and editorial practice/abuse and royalty statements logging three each. (Grievants may have multiple complaints.)

One case that we categorized as a grievance, because our member underwent grievous harassment, was really a grievance in reverse. The member ran a blog on which a contributor had posted photos. The contributor hadn't gotten the proper permissions from a large image bank to use some of its pictures. The supplier couldn't find the contributor, and so hired a three-person law firm to threaten the blog owner with scary-sounding letters. Technically, the member should have given notice to his contributors in advance and claimed "safe harbor" under the Digital Millennium Copyright Act, but the copyright expert we consulted believed that he could have pled ignorance and worn down the little law firm. However, he was also having difficulty with his technology suppliers, and this was the last straw that made him fold the blog.

**Grievance officer interventions:** Most cases only required the GO's advice. One GO is helping a member to investigate the possibility of a group grievance. The member discovered that her article, which she had published in a well-known magazine, had been lifted by a non-profit newsletter along with the magazine's illustrations. She notified the magazine, and was surprised that the publisher didn't think the theft was worth pursuing. She is trying to take action herself, and is looking for other writers who may have suffered the same fate. Our GO is assisting her in finding them. Cheers to both of them for their persistence. We hope we can give news of a happy ending in our next report.

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 can report only one straight-out win in this half year, and that member did her own negotiations with a subsidy press after we reviewed her contract and advised her on her rights to choose the layout for her book. One member received a partial payment of royalties owed to her, but she's still owed more, so that grievance remains pending along with four others. Five members, including the blogger and a journalist who reported, "Getting fired [by a content farm] was the best thing that ever happened to me," abandoned their grievances. (The journalist has started her own site.) Two Globe Pequot authors received acceptable offers from Rowman & Littlefield.

Results are categorized in **Table 6**.

### ***Inquiries***

There were only 10 questions from members, down from 24 in each of the last two half-years, and 15 from non-members, down from 17 in 1H14. We hope these numbers will go back up. We like members to use us as a resource, and especially like to hear from non-members because we hope they'll be inspired to join, although that doesn't happen in most cases.

Four non-member inquiries would have been contract advisements if brought by members, and three would have been grievances. Four inquiries in total dealt with business practices and prices, three with permissions, and two each with self-publishing, copyright, and membership information.

Results are reported in **Table 7**.

### ***International cases***

Most of these cases dealt with American writers and foreign publishers, or vice versa; but there were some interesting ones. An Austrian journalist heard that Americans sometimes sold "first North American serial rights." She wanted to sell those rights in some of her articles to a U.S. publication. But she didn't want to tell the prospective publisher that she had already sold the German rights to those articles. International cases are documented in **Table 9**.

A Canadian member was in danger of losing an important market. Much of his income came from writing reviews of various liquors, and new laws had made it impossible to transport those liquors into his province. The husband of a Macedonian writer wanted advice on self-publishing in English. A non-member wondered whether she could protect her rights to a Finnish marketing campaign.

### ***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.

**New challenges for writer-businesspeople.** As noted in the contracts and grievances sections, writers aren't just writing any more. They're blogging (including soliciting financial support for their blogs), self-publishing, aggregating, and providing services to other members - as well as contracting for other people's services. Owning one's own work is exciting, but brings on added responsibilities and the need for new business skills.

**Self-publishing.** Many of our members are happily creating and distributing print books and e-books through the likes of CreateSpace, Lightning Source, BookBaby, and Smashwords. But, as we noted in our last report, expensive subsidy presses are alive and well. We're not commenting on the merits of the class action lawsuit against Author Solutions, now a subsidiary of Penguin Random House, described at <http://www.gslawny.com/lawyer-attorney-2103286.html>; but the site clearly describes some of the pitfalls of going the subsidy press route. Different firms have different tactics. They may charge thousands for their compulsory "marketing program" or delay royalty payments until after "production costs" - which aren't always mentioned in the original contract - are recouped. Alarms should go off if you're required to pay *anything* up front. Most of these firms are legitimate, and you may choose to enter into such a contract, but please send it to us first for review.

**Content farms.** These phenomena are alive and well, and taking new forms. Online “publishers” offer articles and whole books to readers for whatever price they choose to pay, and promising to forward the writers’ share to them. Crowdfunded sites promise to pay the writers as soon as they get the crowdfunding - and by the way, would the writers like to contribute? Sometimes you can spot them by contracts filled with grammatical errors, but sometimes not. Don’t go into a new venture without a written contract, and be sure to have us review it.

**Work-for-hire writing and editing.** It should be no surprise that more of us seem to be turning to this kind of work as journalism slowly disappears. New kinds of WFH employers are emerging; for example, we recently heard of two companies who engage freelancers to ghostwrite how-to books and biographies for executives and celebrities. Our BizTech Division has resources that can help.

**Piracy.** We get far too many reports of books being offered for sale on overseas websites, without the author’s or the publisher’s knowledge or consent. Sometimes the books are even translated! We welcome ideas on what can be done about this, since the Digital Millennium Copyright Act (DMCA) provisions for forcing websites to remove copyrighted material don’t apply offshore, and recent proposed legislation that might have given some relief had too many other problems to survive.

**Still looking for e-book contracts and royalty statements.** As we get our first webinar on e-book contracts ready for our viewing public (soon!), we’re still looking for examples of publishers who are offering authors less than they deserve. And we’re always looking for examples of royalty statements. We can even help you decipher them!

## People

Our roster is now at 22, due to four experienced GO-CAs leaving for demanding day jobs. Eighteen GO-CAs are active on grievances or contract advisements. If volume remains low we can handle the traffic, but of course we hope volume doesn’t remain low. 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

2014 has been a low-volume year, but productive. In the half-year ending in December 2014 we handled a number of unusual contract advisements and grievances.

Our first webinar on e-book contracts should be in the test phase by the time you read this. Stay tuned to find out when it’ll be ready for prime time. We’re committed to doing two more webinars in this series, but we’d also like to hear from you on other topics for educational programs you’d like to see.

Many thanks once again to National Grievance Officer Amy Rose, National Contract Advisor Susan E. Davis, and Assistant National Contract Advisor Paul MacArthur. Thanks to them, the GCD is still a leader in most of the NWU initiatives, and is still one of the main reasons members give for belonging to the NWU.

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, February 2015. Please direct questions and comments to [GCDCoordinator@nwu.org](mailto: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 2015

### **No Grievances in February—What Does It Mean?**

In her most recent coordinator's report, Barbara Mende noted that there were NO new grievances in February. I can think of three reasons for this anomalous situation:

1. Our members are not signing bad contracts and are thus less likely to develop a grievance against a publisher or employer. If that is the case, then the GCD contract advisors are doing their job! The best way to avoid a grievance is to make sure you sign a contract that is clear, fair, and favorable to you as the writer.
2. Our members have less writing-related work and therefore fewer complaints to bring to the GCD. There isn't much we can do about this as a division. What we can do is make sure that, as members take on different kinds of work (e.g., work for hire), that we are ready to assist with what may be a new kind of contract for them.
3. Members with complaints are not well informed about the GCD's services. Barbara also notes in her report that the numbers of inquiries, from both members and non-members, declined significantly. There was only one inquiry from a member and none at all from non-members in February. This is a concern because inquiries from members often lead to grievances or contract advisements, and because inquiries from non-members often lead to their joining the NWU to get further help.

Without knowing exactly what is happening, I can only propose that we encourage national and chapter officers to promote the GCD's services more aggressively as a valuable perk of NWU membership. Perhaps an email to NEB members is in order. We should also encourage members to make inquiries of the GCD. We all benefit from the research Barbara does to find answers.

### **Using Higher Tech for Advisements and Grievance Counseling**

As we wrestle with getting the e-book webinar ready for delivery, it occurs to me that web conferencing could be very useful to GCDers. I propose that we identify and subscribe to a suitable web-conferencing service. The service would allow a contract adviser or grievance officer and his or her advisee to look at and discuss a contract or other relevant document on their computer screens together in real time.

We are currently trying out various web-conferencing services. If somebody who is reading this has special expertise in managing and conducting webinars and is willing to help, please contact me (see below).

### **E-book Webinar Almost Ready**

National Contract Adviser Susan Davis reports below on the progress of the first of the NWU webinars on e-book publishing. We hope to run a pilot of the webinar with some veteran GCDers within the next few weeks and to roll out the webinar shortly thereafter. We hope to proceed with the development of the second webinar within the next few months.

### **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](mailto: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

March 2015

### **Planning First E-book Webinar**

After the 2013 Delegate Assembly approved a series of three webinars as part of the e-book royalty campaign (proposed by a joint Book Division-GCD committee and approved at the 2011 Delegates Assembly), Book Division Co-Chair Edward Hasbrouck, 2nd Vice President and Assistant National Contract Advisor Paul MacArthur, GCD Coordinator Barbara Mende, NGO Amy Rose, and I (NCA and Book Division co-chair) began work on the first webinar. Since Amy has extensive experience and proficiency in writing webinars, she was hired to write the webinars for a stipend of \$1,200 for each one (total of \$3,600).

We have held a series of conference calls, about every month or six weeks, over the past year, beginning last February, 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 can understand their royalty statements." That topic has evolved somewhat over the course of our work. The content of the webinar was finalized February 2015, and we're in the process of locating a reasonably priced, easy-to-use, reliable webinar service. As soon as we do that, we'll schedule a beta-testing session.

### **Time to Update *Guide to Book Contracts***

In the course of developing the webinar, it became 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, but that must be included in an upcoming budget. However, one of the many benefits of creating the webinar is that that material can be recycled easily into an addendum to the *Guide* until funds can be allocated to the revision. I volunteer to do the addendum, for a small fee, in consultation with other members of the webinar committee, with a final review by National Book Grievance Officer and original co-author Phil Mattera and longtime GCD member Mike Bradley.

### **Contract Workshops**

Several GCD members have given contract workshops over the years, including Phil, Paul, Barbara, me, and contract advisors Ken Wachsberger and Ian Newhem. 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 such 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 a big thank-you for providing the valuable, thoughtful guidance and support members need and rely on. You are the reason new members join the NWU month after month. Working closely with Amy, Paul, and Barbara is a continuing pleasure. The division stays firmly on track thanks to Barbara's expert organizational skills, wealth of experience, and delightfully saucy touch.

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