

Report of the Grievance and Contract Division to the Delegate Assembly August 2018

A fond farewell to Amy Rose

We are sad to report that Amy Rose, our National Grievance Officer since 2005, has resigned. We will miss her dedication, competence, leadership, and wisdom; and we wish her the best in future ventures. Amy was not only an effective grievance officer herself, but also an outstanding mentor to other grievance officers. Amy's duties have been assumed by National Contract Advisor Susan E. Davis, who also has a long and successful record of resolving grievances.

Who we are and what we do

The Grievance and Contract Division (GCD) has handled nearly 7,400 transactions since we started keeping records in 1991. All of these were grievances until 1995, when we added contract advising — which has since comprised the majority of our work — to our mission.

In that time, we have helped members recover nearly 1.6 million from publishers and clients. More significantly, our services have been responsible for attracting over 900 new members from the time we started tracking that statistic in 2003 through June 2018. Of these, 403 joined to obtain contract advice, 311 to pursue grievances, and the remainder to submit inquiries. Among the members brought in by grievances are several who were part of group grievances over the past year against periodicals, notably *Ebony*, *Nautilus*, and *Consumers Digest*. Our statistics on these are inexact because we do not yet have all the latest information.

The GCD is also instrumental in member retention, loyalty and satisfaction. A 2012 survey of lapsed members indicated that people who used the GCD's services were:

- 1) More likely to remain members of the NWU for more than five years by a statistically significant margin.
- 2) More likely to report a better than expected experience with the NWU by a statistically significant margin.
- 3) Less likely to report a worse than expected experience with the NWU by a statistically significant margin.
- 4) No more likely than the average lapsed NWU member to be a member for only six months.

A 2015 survey conducted by the Boston chapter showed “free assistance from the Grievance and Contract Division” to be the primary benefit members derived from the union, with 72 percent identifying it as such.

Our extensive library of materials dealing with contract interpretation, negotiation, copyright and other subjects, as well as our collection of model contracts and guides, keeps members returning. Members have found our *Guide to Book Contracts*, first published in 1995 and revised and amended since then, to be an invaluable reference. Our “E-Books and E-Rights Addendum” to the *Guide to Book Contracts* appeared in February and has been put to good use.

We presently have 15 skilled and dedicated grievance officers (GOs) and contract advisors (CAs; collectively GO-CAs) who work tirelessly as volunteers and are on constant call. These GO-CAs have undergone extensive training and mentoring, and form a network of support to each other for member questions. We have produced a webinar on "E-Books and E-Rights" and have presented several workshops to members and outside groups on contracts and writers' rights.

The first six months of 2018 (1H18)

(Previous semiannual reports are posted at <https://nwu.org/grievance-and-contract-division/grievance-and-contract-division-reports/>. The appendix to this report, with detailed breakdowns of the numbers reported here, is available on request to advice@nwu.org. References to specific tables are found in the appendix.)

Contract advisements. We reviewed 24 contracts in 1H18, compared with 23 in the second half of 2017 (2H17). The trend continued toward fewer books (14 in contract and contract-related grievances, plus four agents, compared with 16 plus three agents in 2H17). Four each related to journalism and work-for-hire contracts. We saw few journalism contracts for a long time, but now they are often offered by large magazine chains in forms that might be suitable for construction contractors – and not always for writers. Of course, they usually include granting all rights forever and holding writers responsible for everything that goes wrong. We tell journalists that they can often push back successfully, and many of them do. (Table 1.)

Payment amounts, rates and terms were first on the list of concerns with eight, followed closely by copyright with seven. (Writers had multiple concerns.) Tied for third with six each were termination and indemnification clauses. Non-compete clauses, options for future work and other rights issues each concerned five writers. (Table 2.)

We received reports that five members had improved their contracts as the result of advice they received. Seven other writers were "satisfied with advice," meaning either that they hadn't completed negotiations or that their concerns weren't directly related to imminent signings. Three refused bad contracts; we regard these as a mark of our success. Two signed bad contracts without waiting for the completion of the advisement process. Many book authors, in particular, think they'll never get another contract if they complain about the one they're offered. We

try to convince them that this isn't so, and tell them that they can change offensive clauses, but some are too worried to listen. (Table 3.)

Nine new members joined or rejoined in order to pursue contract advice.

Grievances. The approximately 22 *Nautilus* and *Consumers Digest* group grievances aren't included in this report because we don't have complete statistics and President Larry Goldbetter, who handled them, has been reporting on them. Both sets of writers are receiving payments now, thanks to Larry's efficient management of them.

Of the other 12 grievances, one dealt with a subsidy publisher who hadn't provided the books the member had ordered, and one involved a publisher who hadn't stopped selling our member's book even after the contract had been terminated. A member brought two grievances against the same publication for reselling her work through two different channels without owning the rights to it. A journalist who had terminated his work-for-hire contract with a magazine found the editors were reprinting his articles over their names. We reviewed the contract and concluded that it was such a restrictive agreement that the editors had a perfect right to do that. The member managed to reach a compromise with them. (If he had come to us for contract advice beforehand, we're pretty sure that he wouldn't have signed that agreement.) A medical practice innocently used the cover of a member's book on its website, not recognizing that it constituted copyright infringement. A book author felt that her royalty statements were deliberately confusing. (Table 4.)

Three grievances involved legal issues. They were referred to attorneys; two of the grievants reported back that their cases had been settled successfully. Two others were referred to the journalism division. Four members negotiated successful conclusions after consulting with us, and one negotiated before he had a chance to consult with us. One grievance is still pending in the capable hands of a grievance officer. As with contract advice, grievances can often be resolved by just asking, "Please let me out of my contract" or "Please don't reprint my articles without attribution." The late humorist Will Cuppy observed that "if you tell somebody to do something, nine times out of ten he will do it." It works even better if you ask politely. (Table 6.)

Seven members, in addition to the group grievants, joined in 1H18 to pursue grievances.

Inquiries. We received 37 inquiries in 1H18, compared with only 18 in 2H17. Thirty-one of them were from non-members. As usual, the largest number of these – 24 – were from non-members presenting situations calling for grievance assistance or contract advice. This number does not include several writers who inquired about these services and subsequently joined to receive them. (Table 7.)

Education and advocacy. The “E-Books and E-Rights Addendum” to our *Guide to Book Contracts*, based on the research the GCD and the Book Division conducted for our 2016 webinar, “E-Books and E-Rights” as well the survey we conducted to identify members' concerns, was published in February. The Guide itself is widely sought after. It needs more updating, especially as regards self-publishing.

We continue to present workshops on contract interpretation and negotiation to both member groups and outside organizations (e.g., academics, mystery writers, medical writers) at every opportunity. We try to educate members through newsletter articles, our own publications such as the *Guide to Book Contracts*, chapter events and personal contacts about such issues as choosing among conventional publishers, self-publishing mechanisms and hybrid publishers; checking up on potential publishers, agents and clients; reclaiming rights from non-performing publishers; understanding royalty statements; negotiation techniques; and use of the Digital Millennium Copyright Act and other tools to address copyright infringement issues. Our focus is on helping members avoid situations that might lead to grievances. We still believe that the most successful grievances are the ones that don't happen.

Conclusion

We're pleased with our record in attracting and retaining members, and with our large number of satisfied customers. Attached are samples of kudos that we have received over the past year.

Many thanks to Assistant National Contract Advisor Paul MacArthur and Senior Advisor Mike Bradley. Above all, thanks to our talented and dedicated GO-CAs.

Susan E. Davis, National Contract Advisor
Barbara Mende, GCD Coordinator

KUDOS FOR THE GCD

"I'll always be grateful to you for your invaluable support & advice."

"I am already so happy I joined NWU, as I've been writing and rewriting a book contract (my first), and the advice I've received, as well as the NWU guide, have been invaluable."

"I'm going to send a small contribution to NWU and identify your work as the inspiration. Just the material at the web site is worth a whole lot more than I can pay right now, but I am well aware of how much it has done for me."

"This service you offer of helping with contract review is so helpful. I would not have known what to make of this contract on my own as I'm not familiar with the industry standards. . . . I was very impressed with [my advisor's] grasp of the language and provisions in the contract and the subtle things that he caught. And I am a contract lawyer! You have a winner on your hands and your members are lucky to have his help."

"Your comments helped me a great deal in deciding to walk away."

"Thanks to you . . . and the NWU contract guide, I was able to get a more equitable contract."

"[The] NWU helped me tremendously in both understanding my contract, and trying to improve it. It enabled me to finalize it without feeling as if I was clueless!"

"I recently had a publishing experience that could have been very stressful. My publisher . . . recently closed their doors without notice and left all their authors high and dry, not even paying royalties. I dropped Larry an email, and within an hour [a GCD representative] of the NWU contacted me, we chatted back and forth via email, she reviewed my contract and advised me of my rights, expectations, and suggested various options I had. I followed her advice and within a couple of weeks, I received my book on a CD for my republishing, without paying the publisher for my property as they had requested, or my account sold to the highest bidder in the publishing market against my wishes."

"Many thanks again for your clear instructive responses to my questions."