

NINK

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Writers Make Money as Freelance Editors

BY G. MIKI HAYDEN

Novelists can always use “extra” dollars, and these days the “extra” is very much necessary. We may not know how to do many things other than push words here and there, but if we do that well our abilities, honed over many years, may bring in the hoped-for bucks through freelancing as an editor. The nice thing about taking on projects this way is that, for the most part, we can sleep late and work at home in our sweats. Some of us do it, so why not you? And if you yourself are in the market for a book editor, consider one of the folks interviewed here.

Having the talent to do the work is the starting point for the would-be freelancer. Long-time editor **Mary I. Kilchenstein** speaks very frankly in this regard. “First, I have to say, don’t fool yourself. Not all writers are editors. Just because you can write a publishable novel doesn’t mean you can tell somebody else how to do the same thing.”

Kilchenstein goes on to list what she thinks typifies a good editor—specifically:

- ▶ The ability to make someone else’s story and characters your own, just as if you yourself had created them.
- ▶ The detachment to remember that the story and characters *aren’t* yours and that their creator has final say over what happens to them.
- ▶ The ability to pinpoint the exact problems standing in the way of a manuscript being publishable.
- ▶ The ability to articulate the identified problems in a way that’s useful to the author.
- ▶ The imagination to find workable solutions

that make sense and that the author is capable of executing.

▶ The judgment not to overwhelm—and maybe paralyze—the client by telling her more than she can deal with.

▶ The courage and the integrity to tell the truth, even when the truth may be that the manuscript will require major revisions.

▶ The compassion to know how to deliver bad news in a friendly but unemotional, considerate but straightforward manner.

“A spoonful of sugar helps the medicine go down,” notes Kilchenstein, who is so tactful that clients thank her for 35-page revision letters.

“I think that the two most important things in a great editor are the love of editing and the desire to help others,” adds editor **Paula K. Kinnes**. That means, she says, being able to look at a manuscript in objective terms and making a high level of dedication to each project and to every author. “Editing is a labor intensive, time consuming endeavor. To be a good editor, you need not

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Address changes may be made on the website.

For members without Internet access, send changes to the Central Coordinator.

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Introducing...

The following authors have applied for membership in Ninc and are now presented by the Membership Committee to the members. If no legitimate objections are lodged with the Membership Committee within 15 days of this NINK issue, these authors shall be accepted as members of Ninc. For further information or to recommend eligible writers, contact:

Membership Chair Holly Jacobs
P.O. Box 11102
Erie PA 16514-1102
or email HollyJacobs1@aol.com

New Applicants:

Kathy Steffen, Lone Rock WI
Helen Brenna, Plymouth MN
Mary Campisi, Avon Lake OH
Lauren Dane, Seattle WA
Tami Hoag, Pacific Palisades CA

New Members:

Michele Dunaway, Labadie MO
Deborah Challinor, Waikato, New Zealand

Ninc has room to grow...

Recommend membership to *your* colleagues.

Prospective members may apply online at

<http://www.ninc.com>.

Refer members at ninc.com. Go to Members Only,

"Member Services" and click

"Refer a New Member to Ninc."

Take Ninc brochures to conferences.

Email Pari Taichert with your mailing address and

requested number of booklets.

ptaichert@comcast.net.

Ninc Statement of Principle.

Novelists, Inc., in acknowledgment of the crucial creative contributions novelists make to society, asserts the right of novelists to be treated with dignity and in good faith; to be recognized as the sole owners of their literary creations; to be fairly compensated for their creations when other entities are profiting from those creations; and to be accorded the respect and support of the society they serve.

And she's off! (perhaps literally...)

**BY KASEY MICHAELS
PRESIDENT (GULP!)**

Okay, guys, here we go. I know I wasn't planning for this, and you all may have voted for me because a) I was the only one on the ballot, or b) if you didn't vote for me maybe somebody would come for *you*.

In any event, after a year of being President-elect under the gentle (*ha!*) tutelage of our now former Fearless Leader, Laura *The Enforcer* Resnick, it looks like Kasey *Who? Me?* Michaels has been handed the baton.

And she's here to tell you, be afraid. Be very afraid.

I mean, sure, I've been having fun. Planning a national conference is, dire predictions to the contrary, more than a bit of a blast (if you can pull off a whiz-bang wedding reception for 250 guests, you can plan a conference).

It definitely helps that 2009 is our twentieth anniversary year, and we get to run riffs on the Platinum thing, the "Hey, let's party!" thing, etc. It hasn't hurt that we lucked out with a wonderfully accessible city, or that we found a terrific hotel with great prices and lots of freebies for attendees. Grabbing Dr. D. P. Lyle and all of Eileen Dreyer's forensics buddies to put on one hell of a special one-day program wasn't too shabby, either!

Not to mention getting to be one of those in charge of setting up panels and workshops that appeal even to jaded old Stone Age relics who have been doing the conference thing for twenty or even thirty years.

But I digress, as I'm here to issue a warning about the Kasey Michaels presidency.

Here it is: *I don't know what I'm doing! Haven't got a clue!*

Ahem.

Laura walked me through lots of the nuts and bolts during 2008, and I've printed out the

President's Calendar she sent me, using a huge font, and that's now taped to my office wall (I'm thinking of buying some darts and ... nah, not a good idea).

Anyway, here's the highlights:

Jan: Before Jan 10, second reminder e-mail from website to members who have not yet renewed

Jan 15: Renewals due

As soon after Jan. 15 as possible (but leave time for mailed renewals to reach PO Box): Get list of non-renewals to Retention Chair.

Jan 31: Authors Coalition surveys cutoff. Report/affidavit isn't due to ACA until March, but all the numbers have to be as of Jan 31

Feb: Appoint Nominating Committee Chair

Feb: Appoint Audit Committee

Feb 20: Absolute last day for renewals without processing fee

Feb 25: Non-renewals dropped from Nink mailing list and from Ninlink.

Mar: Bylaws vote closes; final vote-count to be reported

Mar: ACA survey info due to ACA.

Apr: Audit Report due

May: Treasurer sends completed report due to Kansas Secy of State.

May: Appoint Elections Chair

Jun: Nominating Committee's slate due

Jun: Final operating budget plan for the year

Jul 1: Updated proxy forms to be completed to go in Aug *Nink*

Jul 1: Election slate's bios due to *Nink* editor to appear in Aug. edition

Aug 1: Ballot to *Nink* editor to appear in Sept. *Nink*

Sep: Make sure proxies are in conference attendees' material, prep AGM agenda, have financial report available for AGM attendees.

Oct 1-4: Conference, AGM, in-person Board meeting ▶

Oct 31: Election results due
Nov 1: Annual renewal forms to be mailed

Those again are, to quote Laura, “Just the highlights.” The list is then broken down month-by-month, seven full pages of Must-Be-Done’s, beginning in November of 2008, no less, so I’m already watching that wall!

Now, if your eyes haven’t crossed yet, please notice how many of these “highlights” for the first few months (bolded) have to do with chasing down members who lost their renewal notices, thought they’d already sent them in but didn’t, hadn’t realized they can re-up online or download the form and the Author’s Coalition do-hickey (paying for so many member services that otherwise would come out of much larger annual membership dues, and that must be in Ninc hands by January 31), and receiving panicked emails from members who want to remain members but, oops, see above reasons their renewals didn’t show up.

So, since I am, like all of you, a working writer, and because I, unlike you, have somehow found myself suddenly in charge of an organization of well over 600 members—and have been warned that getting over 600 writers to do anything in an orderly fashion is like trying to herd cats—if you

could all help me out a little here with the dues and ACA thing I would be ever so grateful. We’re talking really, *really* grateful here...

Right now, while I’ve got you—check to see if you can find your renewal form, your ACA form. Do what you gotta do filling it all out, shove it all in the envelope, slap a stamp on that puppy, and get it in the mail. If you can’t find it, go online and re-up there, or download the form you can’t find on your desk, and mail it before you forget.

You don’t want to try to survive in this crazy world of publishing without Ninc, you know you don’t. And you sure don’t want to miss the party in Saint Louis.

Mostly, though, you don’t want me invading your mailboxes with reminders about re-upping. You probably don’t want me doing that any more than I want to do it. And you want to help me, right? You know how I got into this—I was roped into it so that *you* didn’t have to be roped into it.

Hey—that’s right! You owe me! Give your Fearful Leader (not a typo...) a break and re-up now.

Thankyouverymuch...

P.S. Um, guys? About those Bylaws forms that you thought you already sent back ...

Ninc Volunteer Jobs List

► **Job Title: Ninc Members to present Workshops for the St. Louis Conference.**

Job Description: Present a workshop alone or with other Ninc members, your editor, or whomever you think would make a great panel. Send an email with your idea.

Contact: Karen Tintori Katz, ktinti@aol.com,
Leslie LaFoy, llafoy@earthlink.com,
Kasey Michaels, kcmi@aol.com

► **Job Title: Cartoonist**

Job Description: Produce a cartoon (either strip or single panel) to run each month in *Nink*. Payment to be negotiated.

Contact Person: *Nink* Editor Cindi Myers,
CMyersTex@aol.com

► **Job Title: Discounts committee member**

Job Description: Committee member will help target organizations, retailers, service providers or anyone else you can think of to lobby for discounts associated with our profession for Ninc members.

Requirements:

- 1.) Have ideas,
- 2.) Be willing to ask nicely,
- 3.) Obtain basic information from the Discount-giver to put up on Ninc.com,
- 4.) Like saving money for yourself and fellow Ninc members.

Contact : Pat McLaughlin: PmcLinn@aol.com



Good Eating in St. Louis

BY SHIRL HENKE

I confess I'm a foodie and there's no better place to be one than my hometown. Highbrow or low, St. Louis has it all. So let's talk about good eats around the metro area, starting with close-by places. Tony's and its casual counterpart Anthony's offer five star dining that won't raves from my fave foodie Willard Scott. Kemolls has great Italian with a view to die for. For loft district chic, check out Washington Avenue's ethnic and American cuisines: Kitchen K for Cajun fusion, the Dubliner for Irish fare. If you're sports minded, try Mike Shannon's or Fil5teen.

Laclede's Landing, with cobblestone streets and 200-year-old warehouses converted into pubs and restaurants, combines fun casual dining with jazz, rock and blues. Give Jake's Steaks a try for Cajun, quaff microbrewery beers at Morgan Street or devour a loaded burger while watching the Mississippi at Sundeckers. My fave is Hannagan's.

You'll need to cab it to the old-fashioned soda fountain lunch counter at the Crown Candy Kitchen in north city, or visit Union Station and join the Parrotheads at Key West Café for homemade chips, seafood and Key Lime pie. Check out the jazz and blues at the Broadway Oyster Bar or BB's Jazz, Blues & Soups—these two are not to be missed for local color!

Home to the second largest Mardi Gras in the country, Soulard is filled with blues bars and good food, Creole, Cajun or plain American. The 9th Street Abby offers fine dining in a converted church. If you want authentic Irish music, McGurk's is your

place. For soft jazz, Hammerstone's. While you're in Soulard, be sure to visit the Farmers Market established in 1779. You can buy exotic herbs and spices or nosh on fresh baked goods. They even sell beaver tail if you have a hot plate in your room.

A bit further south near the world's largest brewery (forget InBev—AB's still king in St. Louis) is perhaps the most unusual joint in the region. Venice Café's specialty is Jamaican food, but feast your eyes on the millions of pieces of glass and beads that cover floors, walls, even ceilings. The place is a psychedelic trip without drugs!

Tucked amid the gorgeous old houses around Lafayette Square are dozens of great restaurants: Ricardo's for Italian (unique calamari), Sqwires, in an old wire factory, for fab flash-fried spinach, or Eleven Eleven Mississippi, a hotspot with a wide-ranging menu. For Mexican, Arcelinas. The choco-holics in the crowd gotta save room for Bailey's Chocolate Bar to OD.

The Food Network calls The Hill "one of the top Little Italy neighborhoods in the country" where the fireplugs are painted green, white and red like the Italian flag. Yogi Berra, Joe Garagiola and many sports legends grew up here surrounded by great restaurants—Bartolinos, Cunetto's, Lorenzo's, Zia's...you get the idea. Upscale at Giovanni's or checkered tablecloths at Gian-Tony's, the food is superb.

The Delmar Loop and the Central West End, are sidewalk café havens and people watchers' delights. Chuck Berry still performs at Blueberry Hill in the Loop. Stroll down the Loop Walk of Fame. Along the way try Cicero's, Brandt's, Riddles ▶

Penultimate, or the Thai, Mexican, Middle Eastern, Ethiopian or Chinese places. Fitz's Root Beer Bottling Company is fun.

The CWE is where the serious money folks of the 19th century hung out. It's worth the trip for the architecture, but you'll want to gorge on lox, chopped liver and mile high sandwiches at Koppermans, the best deli on earth (yes, I've eaten in New York and Chicago delis; this is still my pick). For a genuine Welsh pub experience try Llewellyn's, or just hang out at Duffs and watch the crowds go by while you eat. The Pasta House has a restaurant in the CWE. I don't usually mention chains, but this one is local, offering really good Italian food and a marinated salad to die for.

At the art museum, be sure to lunch at Puck's (as in Wolfgang). For casual fare in Forest Park, the Boathouse offers lakeside dining. Although the food at our top-ranked zoo isn't gourmet, fuel up to watch tiger cubs and penguins.

St. Charles is an old French settlement filled with great places to eat interspersed with shops of all varieties. Vivian's Vineyards in French Town has a very good eclectic menu. The Lewis & Clark features American cuisine and a knockout view of the Missouri River. If you're looking for a neat lunch place, Miss Aimee B's Tea Room is just the thing. Try their quiche.

Alton, Illinois, on the Great River Road, is a quick drive to see autumn colors. The historic old river town sits high on the bluffs and is filled with antique shops and restaurants. For nostalgia, don't miss Fast Eddie's Bon Air for burgers and beer at bargain prices—you'll think you've been teleported back to the 1950s. Tony's offers delish artichoke appetizers and steaks. Gentelins is a must for toasted ravioli (St. Louis's own invention) and sensational seafood. My Just Desserts offers superb

lunches and home-made pies.

St. Louis is filled with incredible places to eat in anyone's price range. Now I'll tell you what tastes best of all. If the baseball gods favor the Cardinals in '09, the nearest thing to heaven is eating a juicy jumbo hotdog while you sip an ice cold beer at Busch Stadium!

Bon appétit!

P.S. from Kasey Michaels: I checked, and even if the Cards don't make the Division playoffs in 2009, the Milwaukee Brewers did in 2008 ...and the Brewers wrap-up the regular 2009 season in Saint Louis *during our conference*. There's a night game Friday night and day games Saturday and Sunday, and the Drury Plaza is only one block away from Busch Stadium. Alert all baseball fans, because "We got game!" Oh, and juicy jumbo hotdogs...

And one more thing...as we get closer to the conference date, we'll have hotlinks up on the website for as many of the above fabulous restaurants as we can, for your convenience.

Ninc Goes Platinum: Celebrating Twenty Years Of Excellence

Drury Plaza Hotel, Saint Louis
September 30 – October 4, 2009

Register Now!

<http://www.ninc.com/conferences/2009/index.asp>

Business Briefs

Compiled by Sally Hawkes

BookScan had Better Numbers

The Thanksgiving week report has unit sales up 6% from last year at the same time. The biggest increase was in children's fiction sales, at 33.7%. The leading author was Stephanie Meyer.

Borders Not Selling

With retail sales down 10% in the third quarter, more than Barnes and Noble and Book-A-Million, Borders is no longer for sale. Lack of customer traffic (most noticeably at the beginning of the final quarter of 2008) and the economic decline are cited as well as an "aggressive" inventory project. There is still an option to sell the Paperchase group to Pershing Square Capital.

Writers Make Money as Freelance Editors

Continued from page 1 ▶ only the editorial qualifications but a commitment to what you are doing.”

Katriena Knights further reminds would-be freelancers, “An editor needs to be willing to let the author breathe. In the end, it’s her book, not yours, though it can be hard for the editor to let go. You need to be able to let other writers keep their own voices and styles, without forcing your own on them.” She further suggests that when a freelancer takes on a job, she has to be disciplined in meeting deadlines, and be organized so the little details don’t fall through the cracks.

Leslie Kazanjian puts her own spin on the question by saying that editors should be fairly knowledgeable about markets, and somewhat intuitive in regard to each particular author’s strengths and capacity.

All the editors agree that a bottom-line requirement for a freelance word-worker is a thorough grasp of the technical side, particularly grammar and punctuation.

Finding the Jobs

Those loaded with the outlined skill set will want to get underway immediately. So where are the jobs to be found—and how?

A “ton” of freelancing opportunities exist out there, states Knights. She recently started on a quest to fill her schedule with as much freelance editing work as she could handle and consequently discovered a huge number of sources for this kind of work.

Knights advises searching online under the keywords “freelance writing and editing jobs,” where you’ll find a collection of website portals. At these, you can either set up an account as an author and bid on work, or have access to lists of available projects. Among the sites are:

<http://getafreelancer.com>,

<http://scriptlance.com>,

<http://freelancewritinggigs.com>.

Kinnes acknowledges that “the biggest problem

when starting out is finding clients.” Freelance editing clients aren’t likely to be repeat customers very often either, so the editor must continually look for new business. To that end, Kinnes’ strategy is to network all over the place—plus she often receives referrals from satisfied clients.

Kazanjian, like Knights, feels that freelance opportunities abound. “Everywhere I look, people need editors. Think menus, newspapers, advertising circulars, church calendars, flyers, college theses, billboards, even movies and TV shows.” (Those TV shows and movies can be local ones—someone has to write or sculpt the words.) Kazanjian advises making connections with the marketplace through Internet employment sites, college or local bulletin boards, writers’ groups, or even by placing notices in newsletters for writers. Like Kinnes, Kazanjian has depended mostly on word-of-mouth referrals, but she acknowledges that in “an increasingly competitive market,” she really should develop a website.

The Dollar Payoff

The next big question is what to charge. Kinnes has spent time pondering that issue and says, “This is my full-time job, and I need to earn a living. But I also realize that many authors don’t set aside money for editing when they decide to write a book.” Understanding that writers are often strapped for cash, Kinnes tries to keep her rates at a reasonable level. She thus works on a flat fee per manuscript basis, depending upon the number of pages in the work. While her rates can vary and do change, the charge runs from \$600 for a 100-page manuscript to \$1,600 for a 400-page manuscript, assuming that clients follow her submission guidelines. For smaller projects Kinnes offers an hourly fee.

Knights has a certain pay scale in mind when she bids on projects, and she notes, “One of the problems with freelance portals, overall, is that a ton of people out there expect to pay extremely low rates for work. I bid high, because I want to be able

to make a living.” For writing jobs, she tends to think along the lines of a certain amount per word, something commensurate with a pro magazine rate. For editing, she looks for a rate similar to what she’s making already—which she guesses to be the market rate. “Pay scale’s always a tricky thing—you have to think about not only how much money you need to pay your bills, but how much you have to set aside for taxes.”

Kazanjian adds that publishers often have set fees or hourly rates for projects they assign to freelancers, so you take it or leave it. With individual writers, she discusses the parameters of a project and usually works at an hourly rate that varies depending upon the type of work required. “This, I believe, leaves authors in control of how much or how little they can afford to invest,” she says, “and how much or what type of input they desire.”

Kilchenstein initially worked only by the hour, but once she set up a website, she needed a fee scale easy for clients to understand. For manuscript evaluations, she charges \$400 for the first 25,000 words and \$95 for each additional 12,500 words or portion thereof (a rate she intends to raise in 2009). She only takes manuscripts in electronic form, so she can check the word count and see if the client’s calculation of the fee is accurate.

In order to figure out a fee for a substantive (line) edit, Kilchenstein evaluates the manuscript and determines the time needed to pay her the hourly rate she wants. A really “clean” manuscript costs about half of what the sloppily written or especially dense manuscript will. “That’s why I won’t line edit any manuscript that I think isn’t ready to be edited—no matter who the author is, no matter who else has read the manuscript and says it is ready,” Kilchenstein states. “I won’t waste the client’s money, fixing grammar and reconstructing sentences that I believe ought to be revised by the author—nor will I waste weeks of my time, knowing that I’m merely rearranging deck chairs on the Titanic.”

Kilchenstein bills clients by the hour for phone consultations, and for revision (“doctoring”), she discusses payment in detail with the client, then creates a written contract that both sign. Kilchenstein always requires payment in full, in advance, from first-time clients but asks for a deposit of about half and the balance on completion from those she knows to be reliable.

The Pros and Cons

Freelance editing is better than ditch digging, surely, but is it a dream job? For Kazanjian, great satisfaction comes from “midwifing” a project to fruition and helping an author find or develop his voice. “I love seeing writers stretch and grow and develop their potential with each successive book,” she comments. “The cons are: you don’t get rich doing it, and, albeit very infrequently, you do happen upon the occasional disagreeable, stubbornly defensive, or overnight-sensation-wannabe writer.” Another con for her is that she hates marketing herself, which, as entrepreneurs, freelancers must be more than eager to do.

Knights admits that both her editing work and website content work can be tedious at times, though she also says both can be enjoyable. “I enjoy editing and writing fiction more than the article writing, but I’ve learned a great deal from the non-fiction work.” The hardest part of every new project comes at the beginning of a relationship in that she has to figure out how the client communicates, or how a particular author wants to handle edits and communication.

“A certain amount of flexibility is necessary,” counsels Knights, who adds, “you also have to be willing to back off and not jump to conclusions about things, particularly with email communication.”

Kinnes, who works only with individuals, cites both many joys and drawbacks. “I love teaching authors about writing and showing them ways to make their manuscripts better. But I have also worked with authors who don’t want to hear what I have to say and won’t accept suggestions.” She loves the editing work, however, and proclaims that “reading for a living is the best job in the world.”

Effect on the Novelist’s Own Writing?

The two novelist editors on our panel acknowledge that working on other people’s writing does affect their own—sometimes in unexpected ways. Knights says that while the work seems to take away time from her own writing, “The more I put fingers to keyboard, or pencil to paper, the more words that seem to flow out. So if I’m writing articles, the more of them I do, the easier they flow, and then the easier the words flow when I sit down to a fiction piece. Work feeds other work.”

Knights also finds that her editing jobs have improved her own writing, since this makes her more alert to all the little details. Further, “Sometimes I’ll ding somebody for a plot point and go oh, wait, I did that same thing in such-and-such. So, yes, a lot of learning goes on as you edit other folks’ work, and that definitely can come out in your own writing.”

Kilchenstein echoes the finding that editing can improve the editor’s own writing. However, she says, “It’s also made it a thousand times harder for me to write—fiction, anyway. In the first place, I can’t think about more than one story and set of characters at a time, whether they’re mine or somebody else’s. So when I’m editing, I can’t write—

period.” At the same time, the analytical part of her brain goes into overdrive with the editing and she needs some space afterward to return to a better balance of creative and analytical “sides.”

Thus, while the requirements for doing this sort of work may seem the same as those for sainthood, and the work can be stringent, it can also be rewarding—both in terms of helping others to create some wonderful written works and in making those so-called “extra” dollars.

G. Miki Hayden, author of [The Naked Writer](#), a comprehensive style and composition guide, also freelance edits and can be reached at Ghayden2@nyc.rr.com.

Meet Our Panel:

Despite spending more than 25 years in-house as an editor at Pocket Books, Penguin/Putnam, and Harlequin/Silhouette, and as a freelancer for Avon, Avalon, Bantam, Dorchester, Harper, and Thorndike—and helping countless individual writers, **Leslie Kazanjian** (ljkazan@msn.com) says, “My favorite pastime is still reading.” After she decided to work from home, publishers, authors, and literary agents continued to seek her services and recommend her to others. Kazanjian takes on: book doctoring, developmental editing, substantive/content/line editing, and more, for a full range of commercial fiction and nonfiction.

With a dizzyingly varied background, **Mary I. Kilchenstein** a.k.a., Mary Kirk (ActiveVoiceEdit@aol.com; <http://active-voice.com>) never once dreamed of being an editor. At home with her firstborn, she assisted a university professor who was writing a book. Afterward, he sent her numerous student editing clients. Kilchenstein’s own seven novels down the road, she began to edit for her writing buddies. Since then, she has worked with authors on all types of popular fiction and academic work.

An editor for more than 20 years, **Paula K. Kinnes** (thenovelmisssp@larklimited.com) spent the first 13 of those editing legal materials. Then, wanting to help individuals upgrade their writing skills, she switched to working with first-time authors. Her editing for grammar and punctuation is standard, but she also provides story and content assistance if an author requests, and even developmental editing: “If a client comes to me with an idea for a book, I work with that author until we have a completed manuscript.”

Published since 1997, **Katriena Knights** (krcknights@msn.com; <http://katrienaknights.kabeka.com>) is fluent in a wide variety of topics/styles/genres. She provides all sorts of editing, most often in paranormal romantic fiction, including erotic fiction. She can help shore up relationships, plots, and, yes, even the sex scenes. But Knights works with other types of novels as well and does web content writing of all kinds.

Using an Editor?

BY G. MIKI HAYDEN

What can you expect as an author looking for an editor's help with a project? The featured article this month holds some hints but here's the low-down on more of the details:

▶ Editors do want to make money but their time is limited. They can only work on so many projects per year. Therefore, they have to deem projects worthy before taking them on. Don't feel insulted if you're rejected by the editor. That mostly means the fit wouldn't be a good one. Go down the line and try the next person recommended or the next one of the panel here who looks good to you.

▶ Deciding on the fit works both ways. You can ask for a small sample of the editing—maybe a page—in order to see what you're getting yourself into. Even then should you decide to go ahead, if you're not convinced this is the right editor, make a small commitment to start rather than asking to have the whole work edited. You should be able to tell after an hour or two of editing whether you and the freelancer click.

▶ Money is one of the major considerations for most authors. You want to have the best manuscript possible to send out but does that mean you have to spend thousands of dollars? A reasonably good editor shouldn't cost the author a king's ransom—more expensive doesn't necessarily mean better skills (don't be intimidated)—but cheaper isn't always better, either. Cheaper might mean the

editor's skills aren't strong, but more expensive can simply mean someone with a good reputation who may or may not be better than a less pricey freelancer.

▶ You can expect to have the editor set a fixed fee and a finish date before starting to work. While a date might change due to emergencies, it shouldn't shift by weeks or months. You might want to build some recourse into your agreement, though most freelancers will honor any deadlines set. You should also anticipate having to send your freelancer a deposit of at least half the total upfront, and you may have to send the remainder before completion of the second part of the work.

Generally speaking, the editing of a manuscript means one go-through, which also means the results won't be absolutely pristinely perfect. If you want perfect, that means more than a single draft—and a much higher pay scale for the editor.

Most editors will agree to work either on paper or electronically—you pick the medium—though some will ask for one or the other. If you request that the editor work on a paper copy, then you can also expect to pay the round-trip postage.

Do you really want an editor to work on your writing? Yes, you may. A career as a writer ultimately is about the selling. If you have some writing weaknesses, and we all do, then turn to a professional to help you out. Many authors do just that, for the competitive advantage. ▲

Business Briefs

Stanza & Random House

Books by Random House authors are available free from Stanza, Lexcycle's iPhone ebook reader. This includes titles from Julie Garwood, Charlie Huston, David Liss, Laurie Notaro, and Simon Rich. Initial offerings will be backlist titles and will include previews of 2009 releases.

NetGalley Gets Fine Tuned

The year old online galley distribution service has been taken over by Firebrand Technologies and Rosetta Solutions. NetGalley will be part of Firebrand's tech suite and be easier to use in the future after total integration in about a year. Current clients have been mostly small or mid-sized independent publishers.

How the Settlement Will Work

BY ISABEL HOWE

The landmark settlement between the Authors Guild and the Association of American Publishers (AAP) and Google promises to create new markets for out-of-print books, while vastly improving reader access to those books.

The settlement will establish a new not-for-profit organization controlled by authors and publishers, the Book Rights Registry, which will collect and distribute revenues from Google and maintain a database on rights-holders. The board will be composed of an equal number of author and publisher representatives, initially appointed by the Authors Guild and the AAP. Google will provide start-up funds for the registry; ongoing funding will come from an administrative fee the Registry will draw from overall revenue.

The Google Book Search “library” will be composed of both out-of-print and in-print books. Out-of-print books scanned by Google from academic libraries are included in the database by default, although authors or publishers may request that specific books be removed. In-print books work in opposite fashion: They are not included without the approval of the author and publisher. One of the first tasks Google will have is to help determine what is in print and what is out of print, by discovering which books are commercially available.

Out-of-print books are the central focus of the project. The goal was not to displace the traditional market for in-print books, but to create a new market for out-of-print books. Many books that were unavailable to the general public, and thus earned nothing for their authors, will get a second chance as a result of the settlement.

Authors can easily opt out of the system through the Book Rights Registry. Authors can contact the Registry and say, for example, that they want some of their titles available and others unavailable—and can change this later on.

All licensing revenues go initially to Google, which keeps its 37% share and forwards the remaining 63% to the Book Rights Registry. The Registry then forwards the appropriate amount to rights-holders, keeping an administrative fee. Google also passes on usage data, which determines how the Registry distributes payments.

The revenue split between authors and publishers includes several different categories. For out-of-print books, there are three possibilities:

- ▶ If the rights have reverted to the author, he or she gets 100% of the income, minus the Registry’s fee.
- ▶ If the rights have not reverted, and the book was

published after 1986, there is a 50–50 split between the author and publisher.

- ▶ If the book was published before 1987, the revenue split is 65–35 between the author and the publisher, the majority going to the author.

For in-print books, the split depends on the terms of the book contract between author and publisher.

The arrangement creates four initial sources of revenue: Institutional licensing, purchase of individual online editions, advertising, and fees from printing at public access terminals available at public libraries and higher educational institutions. Institutional licensing promises to be the most significant economically. Google will license unlimited access to the database to colleges and universities for a flat fee based on the number of students and faculty.

The second source of revenue is from individual online use, which allows individuals to set up accounts with Google Book Search and pay to access particular books. Google will establish initial prices on books ranging from \$1.99 to \$29.99, but these can be changed later by authors or publishers. These online editions will not be downloaded by users; instead, account holders will log in to view books they’ve bought through the system.

The same 37%–63% split will apply to the third source of income, advertisements. When readers use Google Book Search individually, not through a university license, they will see ads—plain text only, with no popups, audio or motion permitted—on various pages. Google will receive the income from ads displayed on most of the pages, such as those that list search results, but income from ads that show up when a reader is looking at a full page of text from a specific book will be split between Google and the rights-holders.

The fourth source of revenue is from printouts from public access viewings of books.

What all of these uses will mean for authors is renewed economic life for books that are otherwise unavailable or have limited availability. Authors will control whether their books are included in the database, as well as over what is shown under the preview function. The agreement will also benefit readers and scholars, who will have unprecedented access to millions of books.

“How the Settlement Will Work” – reprinted by permission of The Authors Guild. Watch for an article in an upcoming issue of Nink by literary attorney Elaine English on what the AG/Google settlement will mean to Nink members.

Question: In category romance, once a writer gives a proposal to her editor for her next book, is she free to also submit another proposal to a different editor of another line at the same publishing house? Or does the author's option clause require her to wait for the editor of the optioned book to say "yes" or "no" before she is free to query other editors at the same publisher?

Answer: The ultimate answer to this question lies in the language of your option clause. If the option clause does not forbid you to make multiple submissions to different editors at your publisher, then there is no legal reason why you cannot do so.

But that may not be the entire answer... human feelings may also come into play. Your editor may be unhappy that you are not working solely for her, and may resent your willingness to leave her for another line and another editor, even at the same publishing house.

On balance, I'd take that risk, and make the multiple submissions. But if that editor is the only editor who has ever published your work, I would submit only to her, and wait to submit to others.

Of course, you could also discuss your dilemma with her, and see if she gives you her blessing to submit two proposals simultaneously, one to her and another to one of her colleagues.

Question: Is an author still bound by a 'life of the copyright' clause in an agency agreement if their agent only negotiated a contract, but didn't sell the book and the book which was sold wasn't covered under the author/agent agreement? (i.e. author had already sold the novel before signing with the agent).

The agent negotiated my contract because I was a new author who had submitted my manuscript to a publisher and the publisher offered a two-book contract. At the same time I had submitted a different manuscript to the agent and she wanted to represent me. I told the agent of the publishing contract and she offered to negotiate it for

me and took 10% instead of her regular 15% because she didn't sell it.

We have amicably parted ways, without her selling anything for me, so I want to know how I'm still legally bound to her.

Answer: It is impossible to answer this question properly without seeing the agency agreement to see how it described the book or books to which it applied. Assuming that it was quite specific in referring only to the book which was not sold, and not to "all books sold during the period of this agreement" or something similar, and further assuming that your written correspondence with the agent did not amend the agency agreement to add the book which you sold yourself, then you should be bound only for the life of the contract negotiated by the agent, rather than for the life of the copyright in your book.

If you agreed to pay the agent 10% of the royalty earnings on the contract she negotiated for you, and she agreed to accept that in lieu of the 15% stated in the agency agreement, then it seems to me (again, without examining the agency agreement or any correspondence), that your only obligation is to pay 10% of all earnings under that agreement. If that agreement remains in effect for the life of copyright, then she receives royalties for the entire term. If the book goes out of print in a few years, and you resell it to another publisher, this agent's participation would end prior to the resale.

The one thing that makes me a little nervous about this advice is why didn't the agent ask you to sign an agency agreement applicable to the book for which she negotiated the contract for you? Was she assuming that the agency agreement would apply to that book as well?

You should take a very careful look both at the agency agreement and at all of the correspondence between yourself and the agent to make very sure that you haven't agreed in writing to apply the agency agreement to the book which was sold, but with a reduced percentage.

Continued on page 18 ▶



WRITING is TAXING

By Diane O'Brien Kelly

Saving Gold for Your Golden Years

Back by popular demand! We'll revisit the topic of retirement planning.

It's never too early, or too late, to set aside gold for our golden years. Here's some ways to do it.

► **SEP-IRAs.** A popular retirement saving device for self-employed taxpayers is a SEP-IRA. SEP stands for Simplified Employee Pension. A self-employed taxpayer may make contributions each year up to the lesser of 25% of net earnings or the annual maximum dollar amount (\$49,000 for 2009). The annual maximum is adjusted each year for inflation. IRS Publication 560 "Retirement Plans for Small Business" contains the full scoop on SEP's, as well as a worksheet for computing contribution limits. Contributions are deductible in the year made, which reduces current taxes. Tax is deferred until distributions are taken at retirement.

Setting up a SEP-IRA is easy. Just follow the instructions in Publication 560 and Form 5305-SEP, available on the IRS website, www.irs.gov.

► **Traditional IRAs.** A taxpayer may make deductible contributions to a traditional IRA of the lesser of \$5,000 or the taxpayer's taxable compensation for the year. Those age 50 or older by year end may make deductible contributions up to the lesser of \$6,000 or taxable compensation. Compensation includes earned income (wages and self-employment income), alimony, and certain military and reservist benefits. Taxpayers with no compensation can "borrow" their spouse's compensation to make contributions.

If you are eligible to participate in an employer-sponsored retirement plan, whether or not you actually participate, your deduction for traditional IRA contributions will be reduced if your modified adjusted gross income ("MAGI") exceeds a specified amount. MAGI is adjusted gross income including taxable social security, railroad retirement benefits, and passive activity losses, and adding back excluded interest on educational U.S. savings bonds, employer-paid adoption assis-

tance, any student loan interest deduction, tuition deduction, foreign earned income/housing exclusions, and the deduction for IRA contributions. For 2009, the contribution deduction begins to phase out for single and head of household filers at \$55,000 MAGI and is eliminated at \$65,000. The deduction for married persons filing separate returns begins to phase out at \$0 MAGI and is eliminated at \$10,000. Ouch! The phase-out range is generally from \$89,000 to \$109,000 for married individuals filing jointly. However, if only one spouse is eligible to participate in an employer-sponsored retirement plan the deduction will phase out at MAGI between \$166,000 and \$176,000. Many of these limits are adjusted each year, so be sure to use the MAGI for the tax year under consideration.

As discussed above, a taxpayer's contributions may be limited because compensation is less than the annual maximum contribution limit or because the taxpayer or taxpayer's spouse is eligible to participate in an employer plan. Such taxpayers can still make contributions to a traditional IRA up to the annual \$5,000 limit (\$6,000 limit for those over age 50); however, the contributions in excess of the allowable deductible amount will be non-deductible, yielding no current tax benefit. The taxpayer must file Form 8606 to report non-deductible contributions.

Accountholders must begin taking distributions from traditional IRAs by April 1 of the year after that in which the accountholder turns 70½. Distributions are taxable unless the taxpayer made non-deductible contributions, in which case a portion of the distributions will be non-taxable until the full amount of the non-deductible contributions has been recovered. Form 8606, which computes the taxable and non-taxable portions of the distribution, must be filed by the taxpayers in such cases. Distributions taken before age 59½ are subject to income tax and, in most cases, a 10% early withdrawal penalty. The penalty does not apply to distributions on the death or disability of the

accontholder, distributions used to pay unreimbursed medical expenses to the extent the expenses exceed 7.5% of the taxpayers adjusted gross income, distributions used to pay higher education expenses for the taxpayer or certain family members, distributions used to pay up to \$10,000 in first-time homebuyer expenses, or distributions used by an unemployed taxpayer for medical insurance premiums. Certain other exceptions apply. See IRS Publication 590 "Individual Retirement Arrangements" for more details.

► **Roth IRAs.** Roth contributions are the subject to the same limits as traditional IRAs (the lesser of compensation or \$5,000 for those under age 50/\$6,000 for those over age 50). The phase-out ranges for contributions differ for most taxpayers, however, and the phase-out applies whether or not the taxpayer or the taxpayer's spouse is eligible to participate in an employer-sponsored retirement plan. The phase-out range is between MAGI of \$105,000 and \$120,000 for single or head of household taxpayers. For married joint filers, contributions phase out between MAGI of \$166,000 and \$176,000. Married taxpayers filing separate returns suffer a phase-out range between MAGI of \$0 and \$10,000, the same as with traditional IRAs.

Unlike traditional IRAs, contributions to a Roth IRA are not deductible. However, while distributions from traditional IRAs are taxable, distributions from Roth IRAs are not. Thus, earnings on Roth contributions are never taxed. For younger taxpayers who expect to have years of earnings accumulations, Roth IRAs are especially attractive. Taxpayers closer to retirement age must weigh the benefits of a current deduction for contributions to a traditional IRA versus the expected earnings on Roth contributions to determine which will yield the greatest tax savings.

Roth IRA distributions are never required, regardless of the accountholder's age. In addition, any distributions that do not exceed contributions to date are not taxable. Thus, distributions taken before the ac-

contholder reaches age 59½ will be subject to a 10% early withdrawal penalty only to the extent the distributions exceed cumulative contributions and do not fall within one of the exceptions to the penalty (discussed earlier).

► **Splitting Contributions.** Can't make up your mind? No problem! So long as the contribution limits are not exceeded, taxpayers can split contributions between traditional and Roth IRAs.

► **Deadlines.** For all IRAs, contributions can be made for a given tax year through the filing deadline excluding extensions (normally April 15). If you make a contribution for a tax year after the year end, make it clear to your financial institution that the contribution applies to the previous year. If the contribution is applied to the wrong year, you could end up with an excess contribution penalty. Yikes!

► **Qualified Plans.** A self-employed person may establish a "Qualified Plan," including a defined contribution plan (where benefits at retirement depend on the amount contributed) or a defined benefit plan (where contributions are based on actuarial computations to provide specific benefits at retirement). Most people choose SEP-IRAs instead of qualified plans because the rules for qualified plans are complex, with stiff penalties for violations. Hire a pro if you're interested in setting up a qualified plan.

► **Retirement Savings Credit.** Taxpayers with low or moderate income may be eligible for a credit for retirement savings in addition to other tax benefits. Double dipping! The credit is non-refundable, meaning the credit can eliminate taxes but won't generate a refund. The maximum credit is \$1,000 and varies by income and filing status. To determine if you qualify, see Form 8880 and instructions.

Got a tax question? Email Diane at diane@dianeobrienkelly.com and your tax question could appear in an upcoming issue.

Business Briefs

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**The View
from Here
The Mad
Scribbler**
By Laura Resnick



Changing of the Guardian of Opinion

"The problem with opinions is that there is always someone with a different one."

— Jeremy Paxman, *On Royalty*

In a career decision that defies rational explanation, Susan Wiggs has decided to spend more time concentrating on her bestselling, award-winning novels and less time (well, no time at all, actually) writing a *Nink* column.

So now you're stuck with me.

Life is full of bitter disappointments. Adjust.

For those of you who joined Ninc in the past twenty minutes, allow me to introduce myself: I have just spent two years on the Board of Directors, first as Ninc's president-elect in 2007, then as the 2008 president of Novelists, Inc.

This means I am now at the very edge of sanity and could easily go off the deep end at any moment.

And for those of you who joined Ninc sometime after autumn 2003, let me assure you that you're in good hands. I've done this before, I'm very experienced, and we didn't get sued: I was *Nink's* monthly opinion columnist, "The Comely Curmudgeon" (title created by a former *Nink* editor, the brilliant Terey Daly Ramin), from January 2000 to September 2003.

Those columns have since been bought and released in a collected volume called *Rejection, Romance, and Royalties: The Wacky World of a Working Writer*.^{*} I mention this because reading me just once

a month, here in *Nink*, can't possibly be enough of a good thing. Also, it might cheer up the publisher if someone buys the book.

Anyhow, now that I am no longer an officer of Ninc, I can publicly admit at last that... I hated serving on the Board. I *hated* it.

Oh, it wasn't the work; the work was fine. And it certainly wasn't the other Board members; they were all hardworking and dedicated people. Nor was it the responsibility that bothered me; Ninc wasn't bombing MWA, building a Great Wall between us and SFWA, or negotiating nuclear treaties with the Authors Guild, so the weight of the organization on my shoulders didn't exactly keep me up nights.

No, what I hated about Board service was something rather more specific to my individual personality: I hated how *nice* I had to be.

Every time the Ninc president (or president-elect) opens her mouth, she can count on someone assuming she represents Ninc when she speaks. And if she forgets that's going to happen, and says what she *really* thinks, she's bound to embarrass Ninc. And what did Ninc ever do to her, after all?

So for two years, I had to watch my words, and speak to people as if I didn't necessarily want to strangle them, and delete all insults and profanity from my emails before I sent them.

This was torture for me.

And, sadly for me, some people didn't even *realize* the effort I was making to modulate my comments, withhold my opinions, and keep my temper tied up and held prisoner at gunpoint in a

The Mad Scribbler

dark cellar. Instead of appreciating my uncharacteristic restraint, they objected to my callousness. (Well, yes. I'm callous. And your point would be...?) So, despite my efforts to honor *Roberts Rules of Order*, Emily Post, and Grandma's prayers (*requiescat in pace*), and to be a kinder, gentler person... I was nonetheless asked by my Ninc Board colleagues, with embarrassing frequency, to go away and let them do the talking.

For *two years*, I ate antacids as I swallowed my bile and tried as hard as I possibly could to be... *n-i-c-e*.

Egad.

Let's face facts, I'm just not cut out for that.

But while it was my obligation to do so, I tried hard to play well with others. And to those individuals, institutions, and nations whom I nonetheless offended, I can only say...

My term of service is over, I've slipped my leash, the cage is unlocked, and I am free, *free*, *FREE* at last! So cross me at your own risk! I'm taking no prisoners! Mess with the Mad Scribbler at your peril! These boots were made for walking!

Don't think of me as an ex-president. Think of me as licensed to kill.

From here on out, I'm saying exactly what I think, and my only guiding principle is the same one I always used in all my public comments *before* becoming an emotionally repressed, verbally castrated Ninc president: Try not to get sued.

(This is a good guideline in almost any endeavor, actually. Work, sports, driving, travel, sex, cooking, surgery, writing, weddings and funerals, wakes and bar mitzvahs, dinner and dancing...)

After two years of guarding my tongue because I might be accused of "speaking for Ninc" if I told someone to try removing his head from his sphincter before pestering me, I am finally back in the happy position of speaking for no one but myself. After *twenty-four months* of not threatening to vivisect people, because I might be seen as "representing Ninc" with such behavior, I now get to go back to being what I was born to be—a loose cannon, a lit fuse, a remorseless bitch.

Gosh, it's good to be home!

And having recognized my inherent unsuitability as a team player, I chose not to join Ninc's Advisory Council at the end of my term.

The Advisory Council consists of Ninc's five founders and most of its past presidents; it currently has seventeen members. The AdC is a living repository of Ninc's organizational memory. These are the people who, as a group, know what Ninc did, when we did it, why we did it, and whether it worked. They are an invaluable resource for every current Ninc president. The AdC always has a representative on the Board of Directors to serve as an advisor on discussions, debates, and decisions. The AdC Representative answers the Board's "where do we keep the bathroom keys" and "why is the sky blue" questions, or consults the AdC for input when she doesn't know the answer.

I think the Advisory Council is a great resource, and I was very glad to have access to it when I was Ninc president. I consider the Advisory Council Representative a crucial person on the Ninc Board, and I was glad to have her there.

But it's safe to say that I am not temperamentally suited to sit on a council of thoughtful, reasoned advisors. So I decided not to join the AdC. (And the Advisory Council's involuntary sigh of relief, when they heard about this, was audible as far away as Vladivostok.)

There's a *reason* I work alone.

To be clear, this rant should *not* discourage you from serving on the Novelists, Inc. Board of Directors (or, indeed, the Advisory Council). This is not about Ninc service, this is about me—me, *me*, **ME!** The reason others were always asking me to let them do the talking throughout 2007-2008 is that most of my colleagues are much, much better suited to human interaction than I am—me being someone who typically says things like, "Can't we just kill this person?"

If you are slightly more reasonable than I, then chances are that you'll find Board service rewarding, as many of my colleagues and predecessors did. (Yes, they genuinely did. Ask them.) As writing organizations go, Ninc is the most reasonable and least "political" one in existence. And when lunacy and politics aren't in the mix, then it is indeed rewarding to accomplish things for an organization and community that you've belonged to, enjoyed, and gotten something out of for years. And despite all my griping, the vast majority of Ninc members

made me feel appreciated during the two years that I served. Maybe you were sincere, or maybe you were just trying to tame the beast. Either way, I appreciated your kind comments. So thanks for all the fish!

I'm bringing up the subject of service because there is a tendency in any volunteer organization, including Ninc, for people to state what they want to see being done, to bemoan what's not being done, or to criticize what has been done... and to simultaneously refute any suggestion that if they want something done (or want it done a certain way), then they should do it themselves.

There are some ideas idly proposed on Ninlink (or passionately exhorted in personal emails) that the Board or various committees can use, incorporate, and run with. Mostly, though, ideas in volunteer work are just like ideas in fiction writing: They're the *easy* part. And exactly as in writing, execution and implementation are the hard part, the part that separates the women from the girls, the place where the rubber meets the road.

Moreover—and also exactly as in writing—someone who's *doing* the work is much more likely to have a realistic understanding of which ideas will work and which won't. Because (let's review) ideas are easy; it's implementation that's hard. In the same vein, it's easy to lounge around and think up what Ninc should do for you, or should've done better on your behalf; it's a lot harder to join Ninc's volunteer ranks and *do* it, figure out how to make it happen, or discover why your brilliant idea won't work and adjust it accordingly, so that at least *something* is accomplished.

This is not to say that the Board and various committees don't want to hear your ideas. We did, and they still do. But you might want to speak kindly of volunteers who are so busy actually *working* on their own ideas for Ninc that they don't also have time and energy to work on *your* ideas for Ninc, too—especially if you yourself are *not* willing to work on your ideas.

Although I am emphatically not a people person, I co-chaired Ninc's first Outreach Committee, served as a member of the Nominating Committee, served as assistant editor of *Nink* for a year, chaired a national Ninc conference, and served as president-elect and president.

I didn't do this because I am a better person than others (indeed, I think it's been well-established

that I am not), and I certainly didn't do it because I have more time to spare than others do (I definitely don't). I did all that, over the years, because there were things I wanted to see done in Ninc, and I know that if you want something done in a volunteer organization—particularly a small one run by extremely busy people—then it's much more likely to get done if you do it yourself. Plus, they always promised me unlimited amounts of chocolate. They *lied*.

So, given my personal history in Ninc... take a wild guess at how sympathetic I am to people who (a) want Ninc to do something, (b) refuse to do it themselves, *and* (c) complain about it not being done, or not being done the way they wanted.

This is a good example of where I tend to say, "Can't we just kill this person?"

If a people-loathing, doesn't-play-well-with-others, overwhelmed-by-professional-workload, has-moved-four-times-in-three-years-and-still-can't-find-socks, curmudgeonly bitch like me can step up to the plate and volunteer in Ninc in order to work on her own brilliant ideas for the organization rather than expecting someone else to do it for her, then so can you.

And if you can't, then maybe you want to consider doing what I tried my best to do for the past two years... and at least be *nice* about it.

Egad.

Also, apart from service to this writing community being rewarding (despite the unrealized dreams of unlimited chocolate), it buys good karma.

In 2006, a publisher cancelled two of my books and dumped me. A couple of months later, I lost my agent (technically, I'm the one who terminated the association; but that's rather like saying, "I filed for divorce after I realized my spouse had stopped coming home"). The agents whom I subsequently contacted found me as attractive as halitosis.

I suspected I would later look back at the second half of 2006 as the turning point, the period I would recognize, in retrospect, as the beginning of the end of my fiction career.

Then I joined the Ninc Board in January 2007, devoting my oh-so-copious spare time to *you* (so to speak)... And within weeks (and without an agent), I sold those two cancelled novels to a major house, along with a third novel they asked me to commit to, and for the same decent advance levels I'd been making *before* getting dumped Continued on page 20 ▶

Continued from page 12 ▶

Q: Can an author and/or publisher be sued, say, for having Woodrow Wilson or Elvis Presley as a character in a novel? Or for setting a scene from a story in a Wal-Mart or at Disneyland or at a restaurant that really exist? Several people have said that the issue here is defamation, not using a real place or thing. Is this true? Can Mr. Stein cite any examples?

A: Let's be clear: authors and publishers can be sued for anything at all. And getting even a baseless lawsuit dismissed can be surprisingly time-consuming and expensive. So even when publishers and authors have right on their side, a lawsuit can eat into the publisher's profits... and the author's royalties... in a very serious way.

I can think of very, very few things more likely to cause an author or publisher to be sued than using Elvis Presley as a major character in a novel. Lawyers representing the Presley estate are likely to foam at the mouth in their eagerness to get to the courthouse.

Now, let's look at the separate question of who would win a lawsuit brought over the use of Woodrow Wilson or Elvis Presley as characters in a novel. In my opinion, the author and publisher would prevail if they used Woodrow Wilson, FDR, Warren Harding or any other President as a character... even as the protagonist.

Individuals who did not use their names and likenesses for commercial purposes during their lifetimes do not generally have survivable rights of privacy or publicity... and it is those rights that could prevent the commercial use of a person's name or likeness without their permission.

Elvis Presley absolutely used his name and his likeness for commercial purposes during his lifetime, so much so that the state of Tennessee passed a statute specifically protecting his estate's right to monopolize the commercial use of his name and likeness after his death.

But now we come to the hard part of the question: is the use of Elvis Presley as a character in a novel (or, for that matter, in a motion picture), a commercial use which would be prohibited without the authorization of his estate?

Certainly it is a commercial use, in the sense that it is intended to make money, and, if well done, is very likely to make money. But not all commercial uses are equal.

The First Amendment ("Congress shall make no law... abridging the freedom of speech, or of the press") and Fourteenth Amendment ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States") to the United States Consti-

tion prevent the federal and state courts from interfering with free expression except with respect to very narrow categories of speech which are deemed to fall outside of Constitutional protection, such as obscenity, incitement to riot, defamation and hate speech.

Various states have enacted statutes intended to create rights of publicity which would survive the death of the individual. Other states have judicial decisions acknowledging such rights. In all cases of which I am aware, those statutes and decisions accommodate the requirements of the First and Fourteenth Amendments by acknowledging that the survivable right of publicity does not apply to the use of a celebrity's name or likeness in a book or motion picture.

Let's take it one step further: assume that the novel featuring the Elvis Presley character is a best seller, and the author writes several sequels, each of which is turned into a major motion picture. Same result? Theoretically, it should be, and probably will be in those states whose statutes specifically exclude books and films. But I suspect the Presley estate would have a much better chance of winning its case against the author and publisher in a common-law state, because a series of novels and films looks a whole lot more commercial than even a very successful single book.

But what if Carl Hiaasen decides to set his next adult novel in Orlando, and has criminal executives of Disneyworld chasing his hero all over the theme park, intent on mayhem? Can he do that? Yes he can, but he can also expect at the very least a stiff letter from Disney's lawyers claiming that the reputation of the company and the image of the theme park have been defamed and damaged by the fictional events in the novel.

If Disney proceeds to sue, whether the author wins or loses will depend on whether his lawyers are able to persuade the court that the book was advertised as fiction, that readers understood its contents as fiction, and that none of them actually believed that Disney's executives would ever behave in such a manner (good luck with that one, Carl).

Yes, the issue here is defamation. I do not believe that a place of business has any right of privacy or publicity. I do not recall the Louvre suing Dan Brown or his publisher for setting important scenes within the museum, and, under US law, do not believe it could have prevailed had it done so. ▲

Advice given in this column is general and brief, and is not based upon a thorough review of facts and considerations in any given instance. You should consult an attorney in depth if you need personal legal advice.

For more information about Robert Stein, visit his website, <http://www.pryorcashman.com/attorneys-119.html>

To submit a question for this column, email to CMyersTex@aol.com.

Ninc Bulletin Board

COMPILED BY JACKIE KRAMER

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Please sign up for M-Tu-Th-F first, then sign up for weekends.

Beginning with the February issue, eNink eXtras will run a series of Dialogues between best-selling science fiction and fantasy authors Mike Resnick and Barry Malzberg. These two publishing veterans share their insight, experiences and advice on a wide range of topics of interest to working writers, from agents to movies. Available only to eNink subscribers.

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The Mad Scribbler

Continued from page 17 ▶

by a publisher and belittled by agents.

Also during the course of my service to Ninc, another publisher subsequently came to me, quite out of the blue, with an offer that (after we negotiated for a while) I couldn't refuse; and I signed with them, too.

So, after entering office with the belief that my career might well be entering its death spiral, I instead sold four books, two of which books I wasn't even *trying* to sell.

And I made those sales in this notoriously weak market (soon after, don't forget, being dropped by a publisher and turned down by a number of agents) while serving Ninc in a selfless and saintly way—or, at least in a grudging and grumpy way.

Coincidence? Maybe.

But I'm superstitious. I also think cause-and-effect are sometimes too mysterious to fathom, and a smart writer tries anything that might get her under contract again. So the next time my career is in serious trouble, I'm going to do some Ninc volunteer work (despite not playing well with others).

So if you want to give back to the Ninc community, or if you're simply a better person than I am (the bar is set rather low), or if you want to buy good career karma... Ninc service is well worth considering.

Even though I, for one, am frankly delighted that my hitch is over and I don't have to be so damn *nice* anymore.

- ◆ **Publisher's note:** because Ms Resnick is far too modest and self-effacing to shamelessly provide an embedded link to her incredibly gifted collection of essays, we elvishly add here the link to the paperback edition—and if 2008 was an economically challenged year for you, you'll appreciate the paperback edition—available at http://www.amazon.com/Rejection-Romance-Royalties-Working-Writer/dp/0977808645/ref=sr_1_1?ie=UTF8&s=books&qid=1229612500&sr=1-1

Business Briefs

State of the Publishers

Job cuts began in early December at various companies – 35 at Simon & Schuster, 54 at Thomas Nelson, and Random House is slowing its reorganization into three divisions. Penguin has put a freeze on raises to salaried personnel making \$50,000 or more.

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CREATIVE RECOVERY—Part 9

CREATIVE RECOVERY AND AUTHENTIC LIVING

BY ERIC MAISEL

Let me end this series with one writer's story. Like many addicted artists, Sherry held to the belief that if she stopped drinking she would dry up as a writer. She understood that her third and fourth novels were not as good as her first and second ones and that alerted her to the fact that something was wrong, but she chalked those less-than-stellar efforts up to other reasons. She argued that the first two novels employed settings she knew intimately, whereas the last two had ventured into unknown territory; that the first two relied on a conventional narrative style, whereas the last two were experimental; and so on. In her own mind, she didn't think that she was making excuses but only identifying where those novels had gone astray: and her drinking did not factor into the analysis.

Then she began coughing up blood, which scared her onto the road to recovery. She started going to AA, first sporadically and then fairly consistently, found a therapist who knew about addictions, entered very early recovery in a white-knuckle way, and began learning lessons from the process, lessons about lapses and incomplete surrender and the true hold of alcohol on her life. She found nothing much about the process easy and the pull to drink powerful and relentless. In fact it seemed as if the alcohol had indeed done something to calm her, canalize her energy, and help her write, as she felt much more agitated and unproductive in her new sober state.

For a full year she found herself abandoning every writing project she began, usually after only a few days of sporadic and confused effort. She found it harder to sit at her computer, harder to go to that "writing place" inside of her, harder to keep from being distracted by the hum of the refrigerator or the sounds of traffic. During this time her second and third novels went out of print, demoralizing her further and precipitating a meaning crisis and a bout of depression.

She attempted to get help from her literary agent, wondering aloud to him about what she should do next

and write next, but he replied absently and in clichés and showed no real interest in her plight or her future. She fired him; and then felt even worse, because she knew exactly how hard it was to acquire an agent, and now she had none. Part of her blamed everything on her sobriety: she had written better drunk, she'd had a better career drunk; wasn't sobriety the problem?

So she drank. For a while she drank harder than ever. Then she hit her lowest bottom, appearing drunk at a talk she was supposed to give in support of her fourth novel, a book that was limping along but still in print. She arrived so drunk that she could not function and could not miss the fact that she was an alcoholic. She left in humiliation without giving her talk and, for the first time, checked herself into short-term in-patient rehab. On a night that was among the worst of her life, she finally surrendered to the reality of her problem and committed to her recovery.

She began to count her blessings: that her drinking hadn't cost her her day job as a college teacher, that she was still young and healthy, that she had already actually written four novels and was a real writer, and that she still harbored hopes and dreams for her writing life that, to judge by the fact that she had been published four times, might not be unrealistic. She also began to understand how huge a part anxiety played in her need to drink, how uncomfortable she felt in social situations and how frightened she often felt in front of the blank computer screen. She needed something to handle all of that anxiety: only now, she knew, it couldn't be alcohol.

She began a morning creativity practice and an evening meditation practice and instituted a real recovery program. Within a year she was settled enough to meet her demons and to begin a new novel, which, as the occasional novel does, came out whole and felt altogether successful. The first literary agent to whom she showed it offered to represent it and an offer for publication followed shortly thereafter. Recognizing that excitement, like anxiety, acted as a drinking trigger for her, Sherry greeted this news in a quiet, understated way, ▶

making sure that her sobriety and her recovery would not be threatened by this excellent news.

Her next steps were not steps about writing but about living. In fact, she commenced on a new novel very quickly, but she found that being in the world, holding herself open to relating, and confronting her fears about intimacy and life were the real tasks—and, it turned out, the real joys—of the moment. As her recovery progressed, so did the quality and amount of love in her life. She found herself becoming someone who was able to tolerate the foibles of other people, a change, she recognized, that amounted to her letting go of her stubborn sense of superiority. She was writing well; but more importantly, she was growing into a wise person.

We hope that your goal, as Sherry's became, is something grander than creative recovery, which is itself a grand goal. We hope that you choose as your goal authentic living. What constitutes an authentic life? It is comprised of a few simple principles: that you live ethically, passionately, and creatively; that you take responsibility for the meaning in your life; that you honor recovery and sobriety; and that you aim your life in the direction of personal integrity.

This is not a life that comes naturally. You must decide to live it and choose to live it. Many people don't. As a species, we are built to live any number of ways: anxiously, thoughtlessly, superstitiously, addictively, and so on. We can also live authentically, but that requires more effort. If you would like to live that way, then you must set off on a path defined not so much by what you want for yourself but rather what you want from yourself. That is the key: what do you want from yourself?

Who are you intending to be? Do you want to put "acting with integrity" first or do you want to settle for lesser goals? Are you willing to accept the jarring nature of reality, an acceptance that demands lifelong courage and attention, or do you want to reduce your life to the equivalent of slogans? Do you want to take responsibility for the way you spend the next hour or do you prefer to blame someone or something for stealing your life? Authentic living is about shouldering responsibility.

In order to make your ethical decisions now, when they must be made, you must be here right now and not live in the future and not in the past, not defensively guard against now, not resist the rigors and responsibilities of now, but stand up right here, fully and bravely. This is the essence of authentic living and the essence of

creative recovery. Right now, you do not drink. Right now, you work on your novel. Right now, you notice your urges, your disinclinations to create, and your tendrils of anxiety. Right now you deal with each of them. In that way you maintain your sobriety, your creativity, and your authenticity.

Vincent Van Gogh wrote, "If the storm within gets too loud, I take a glass too much to stun myself." The days of a glass too much are behind you but the storms will come again. When they do, reach out for help and not the crack pipe; get drunk on words and not on Scotch; turn to your recovery program and not to the poker table. At those times your life—and your creative life—hang in the balance.

That concludes the series. If you have any thoughts or questions, by all means drop me a line at ericmaisel@hotmail.com. For a comprehensive look at the addiction issues that confront writers, please consult *Creative Recovery* (Shambhala, 2008).

Eric Maisel, Ph.D., is the author of more than 30 books, among them Fearless Creating, Creativity for Life, The Van Gogh Blues, and the recently published A Writer's Space. Creative Recovery, the first comprehensive recovery program for creative people, appeared from Shambhala in October of 2008. Dr. Maisel lectures widely (including at RWA National in 2008), runs cyber support groups for artists, trains creativity coaches, and maintains a creativity coaching practice. He lives in San Francisco. Please visit Eric at <http://www.ericmaisel.com> or listen to his two shows, "The Joy of Living Creatively" and "Your Purpose-Centered Life," at <http://www.personallifemedia.com>.

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BY J. A. KONRATH

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Joseph Andrew Konrath is the author of the Lt. Jacqueline "Jack" Daniels mystery series, including Bloody Mary (2005), Rusty Nail (2006), Dirty Martini (2007), Fuzzy Navel (2008), and Cherry Bomb (2009.) Under the name Jack Kilborn, he wrote the horror novel Afraid (2009). His blog, A Newbie's Guide to Publishing (<http://jakonrath.blogspot.com>), has had over 400,000 hits since 2005. You can reach Joe at hadnort@comcast.net

