

NINK

April 2011
Vol. 22, No. 04

AGENT VERSUS AUTHOR: What Could It Possibly Mean?

BY ELAINE P. ENGLISH

Another frightening tremor struck the publishing industry recently when news reports surfaced that the Peter Lampack Agency had sued its former client, *New York Times* bestselling mystery author, Martha Grimes. In a period like this one, in which bankruptcies seem to run rampant and each day brings new electronic gizmos intent on making print books obsolete, it doesn't take much to unnerve authors. So what does this lawsuit mean? Fortunately, the ruling handed down by the New York State Supreme Court in this case should go a long way toward alleviating writers' fears about claims from their agents and former agents.

[Quick disclaimer: This article is based solely on the court's opinion. No direct contact was made with either party to this lawsuit or their legal representatives. Some news reports have suggested that the agency may file an appeal, but absent a reversal, this court's opinion stands as rather solid protection for authors. (Remember, of course, that notwithstanding its lofty name, the Supreme Court is the lowest level trial court in the New York judicial system.)]

While it's important for an author to review carefully the agreement with any agency that represents her, it is equally important to read the agency clause that is inserted into the publishing agreement.

The facts in the case, at least for the purpose of this ruling, were undisputed. It appears that the Peter Lampack Agency represented Ms. Grimes from 1996 through 2007, when she left and secured new representation. During that twelve-year period, the agency had helped her to secure a number of publishing contracts bringing in revenues of over \$12 million. The publishers included Penguin USA. The dispute arose when her new agent obtained a contract for *The Black Cat* from Viking and the book was published in 2010.

All parties agreed that *The Black Cat* was Martha's option book and that Penguin's option rights to see this manuscript arose from a 2005 contract secured through the Lampack Agency. *Continued on page 4* ▶

INSIDE this ISSUE

Proposed Change to the Bylaws	3
Conference Update: What Happens in Florida	6
Ask the Lawyer: What Rights Does A Publisher Have...	9
P.I. Confidential: The Art of Interviewing	10
Not Your Usual Writing Advice:	
Embracing Change	12
The Mad Scribbler: "Do It Yourself"	14
Forensic Files: What Poison...	17
Bulletin Board	18
Writing Is Taxing: Give and Take	19

Novelists, Inc.

FOUNDED IN 1989

Founders

Rebecca Brandewyne
Janice Young Brooks
Jasmine Cresswell

Maggie Osborne
Marianne Shock

Advisory Council

Janice Young Brooks
Jasmine Cresswell
Maggie Osborne
Marianne Shock
Linda Barlow
Georgia Bockoven

Evan Maxwell
Victoria Thompson
Steven Womack
Barbara Keiler
Pat Rice
Jean Brashear

Vicki Lewis Thompson
Brenda Hiatt Barber
Pat McLaughlin
Kasey Michaels
Kay Hooper

If you have questions regarding Novelists, Inc., please contact a member of the Board of Directors.

2011 Board of Directors

President:

Donna Fletcher
donna@donnaletcher.com

Treasurer:

Marcia Evanick
Marcie@ptd.net

President-Elect:

Lou Aronica
laronica@fictionstudio.com

Newsletter Editor:

Marianna Jameson
Marianna@MariannaJameson.com

Secretary:

Denise Agnew
danovelist@cox.net

Advisory Council Rep:

Kasey Michaels
KCMi@aol.com

2011 Committees

2011 Conference

Chair: Kasey Michaels
Program: Karen Tintori Katz

Anthology

Editor: Lou Aronica

Authors Coalition Reps

Deborah Gordon
Elaine Isaak

Elections

Chair: Sylvie Kurtz

Managing Electronic Rights

Chair: Open; contact Kay Hooper

Marketing

Chair:

Member Retention

Chair:

Membership

Chair: JoAnn Grote

Nink Online Index

Denise Lynn

Nominating

Chair: Kay Hooper

Royalty Committee

Chair: Allison Brennan
Marianna Jameson

Volunteer Jobs List

Coordinator

Dianne Despain

Website

Chair: Pati Nagle

Blog Coordinator

Patricia Rosemoor

Complete committee member listings
are available on the website:

<http://www.ninc.com>

Central Coordinator:

Tonya Wilkerson, Varney and Assoc.
Novelists, Inc.
P.O. Box 2037
Manhattan KS 66505
Fax: 785-537-1877
Ninc@varney.com

Address changes may be made on the
website.

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

Copyright ©2011 by Novelists, Inc.
All rights reserved. No part of this
newsletter may be used or reproduced
in any manner without written
permission.

Website:

<http://www.Ninc.com>

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: JoAnn Grote
PO Box 5, Le Sueur, MN 56058
jaghi@rconnect.com

New Applicants:

Laura Lee Guhrke, Eagle, ID
Melissa McClone, Camas, WA
Kate Rorick (Kate Noble), Marina Del Ray, CA
James LePore, South Salem, NY

New Members:

M.J. Rose, Greenwich, CT
Barbara Samuel (Ruth Wind, Barbara O'Neal),
Colorado Springs, CO
Karen Brichoux, Lawrence, KS
Karen Rose Smith, Hanover, PA
Rhonda Stapleton, North Olmstead, OH
Jennifer Stanley (J.B. Stanley, Jennifer Stanley, Ellery
Adams, Lucy Arlington), Richmond, VA

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.



Proposed Change to the Bylaws of Novelists, Inc.

The Board of Directors proposes the following change to the Bylaws, Article II, Members, Section 2

The current Bylaw states: To be considered for membership, an applicant must have published two works of book-length fiction, one within the last five years.

The proposed amended Bylaw states: To be considered for membership, an applicant must have published two works of book-length fiction, ~~one within the last five years.~~

Rationale: Twenty-two years ago, when this section of the Bylaws was written, the publishing world was a different place. Today, working authors are not published with the regularity of times gone by. A portion of our current membership, if applying for membership today, and past NINC members who wish to come back to the organization—although all multi-published professionals—would not qualify under the existing five-year rule.

In order for a Bylaws change to be made, 67 percent of the membership must vote, as per Bylaws, Article XV: Amendment: “These Bylaws may be amended by a two-thirds vote of the membership represented in person or by proxy at the annual business meeting or by mail vote, or by online vote. No amendment may be voted unless the membership has had at least one month’s written notice of the proposed changes before a vote is taken. Proposed amendments may be brought by the Board of Directors or by petition of 25 percent of the membership.”

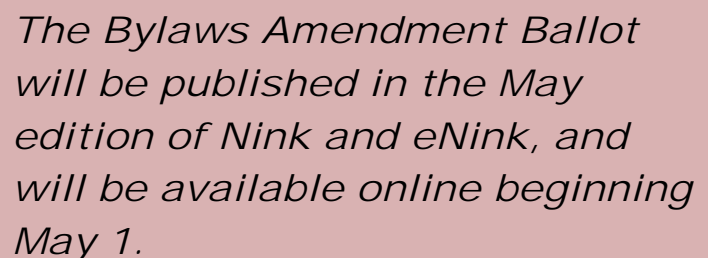
The last time voting for amendments to the Bylaws took place, voting was only possible by mailing the ballots to our Central Coordinator in Kansas. Because of the changes voted on at that time, members can now cast their ballots on this proposed amendment online at www.ninc.com. Members may also download and print out the ballot and mail it to the Central Coordinator. The website is set up to assure that no member can vote more than once. Member votes are anonymous; only the final tally of votes will be accessible by the Board.

We will begin voting on May 1, 2011, and close voting on June 30, 2011. The Board of Directors will be monitoring the volume of returns and reminding members of the deadline.

Please consider the proposed change and vote promptly.

Thank you,

The 2011 NINC Board
Donna Fletcher, President
Lou Aronica, President-Elect
Marcy Evanick, Treasurer
Denise Agnew, Secretary
Marianna Jameson, Newsletter Editor
Kasey Michaels, Advisory Council
Representative



The Bylaws Amendment Ballot will be published in the May edition of Nink and eNink, and will be available online beginning May 1.

Agent vs. Author

Continued from page 1 ▶ The Lampack Agency sued, claiming it was entitled to its full commission on sales from this option book, notwithstanding the fact that the agency no longer actively represented Ms. Grimes nor played a role in the negotiation of the book's contract.

“OPTION CLAUSE”

The agency asserted three fundamental principles to support its claim for commissions. First, they relied upon the option clause in the publishing agreement they had negotiated back in 2005 as the basis for their entitlement to money. The theory seems to be that since this book arose from the option in that 2005 contract, that the revenues from the option book should also be seen as arising from that same 2005 agreement. The court rejected that argument, focusing not on the option clause but rather on the commission provision in the publishing agreement, a fairly standard one, which provided as follows:

The Author hereby appoints [PLA] irrevocably as the Agent in all matters pertaining to or arising from this Agreement Such Agent is hereby fully empowered to act on behalf of the Author in all matters in any way arising out of this Agreement All sums of money due the Author under this Agreement shall be paid to and in the name of said Agent The Author does also irrevocably assign and transfer to [PLA], as an agency coupled with an interest, and [PLA] shall retain a sum equal to fifteen percent (15%) of all gross monies due and payable to the account of the Author under this Agreement.

The Court found that nothing in this clause granted the agent any commission from a separate publishing contract.

“COUPLED WITH AN INTEREST”

The second principle on which the agency relied was that its relationship with Ms. Grimes was “an agency coupled with an interest” which, therefore, entitled them to a commission from the option book. Again, the Court rejected that argument, stating emphatically that simply citing the words “an agency coupled with an interest” is not sufficient to give an agent a security or other property interest in the author's literary works, themselves. The court found that this language gave the agency an interest only in the agency relationship and in the proceeds from the specific publishing agreements it had secured for her.

“FIDUCIARY OBLIGATIONS”

The Court also quickly rejected the agency's third argument—that somehow the author owed certain fiduciary obligations to the agency and that, after their 12 years together, somehow those obligations were breached by not paying commissions on this new contract. The law regarding agents and their principals has been settled for hundreds of years, and it is the agent who owes a fiduciary duty to the principal, not the other way round. The Court in this case had no difficulty ruling that the author is the principal and thus owes no such duty to the agent.

Despite the positive holding, there are cautionary lessons for authors to be learned here. While it's important for an author to review carefully the agreement with any agency that represents her, it is equally important to read the agency clause that is inserted into the publishing agreement. It may well control, as was the case here. Lawyers have been cautioning against the use of that phrase “an agency coupled with an interest” for years. Even though this court refused to enforce that language as the agency wanted, it is still always safer for the author not to have that language in a contract.

This lawsuit and other disputes about what happens after termination simply highlight a fundamental question: What is or what should be fair compensation for an agent? From my years in the business, this is simply an issue on which reasonable people can and do disagree. Is it overreaching for an agent, like the one here, to try to get commissions on an author's option or other future books, once the author has terminated their relationship? Didn't the agent work hard for many years to help that author achieve a level of success that enabled the author to get that next contract? And, shouldn't there be some recognition/compensation given the agent for that? Should compensation be limited to only the specific contracts secured by the agent, or something broader that takes into account more intangible services?

I've seen many agency agreements in which all of this is very explicitly spelled out. Some say an agent is entitled to commissions not only for the specific publishing contract he negotiates but also for any replacements for that agreement, any modifications or extensions of that agreement, or for any contracts that result from the exercise of any option contained in that agreement. For those who favor this approach, the only thing the Lampack Agency may have done wrong was not to spell out its intent adequately.

This case clearly stands for the proposition that courts will not interpret general agency law or non-specific contract language to protect agents or former agents simply because of their past work in representing authors, but had the mutually agreed upon and negotiated contract language been more detailed and specific in these regards, the outcome might well have been very different. While I know it's difficult to think of parting ways with an agent when you're first being offered representation, that's still the best time to discuss your notions of what you believe is fair compensation. Knowing that you're on the same page with your agent at that point is clearly better than finding yourself in court against him.

While...it's difficult to think of parting ways with an agent when you're first being offered representation, that's still the best time to discuss your notions of what you believe is fair compensation.

© 2011, ELAINE P. ENGLISH

Elaine P. English is an attorney and literary agent based in Washington, DC, with more than 25 years experience in the publishing field.

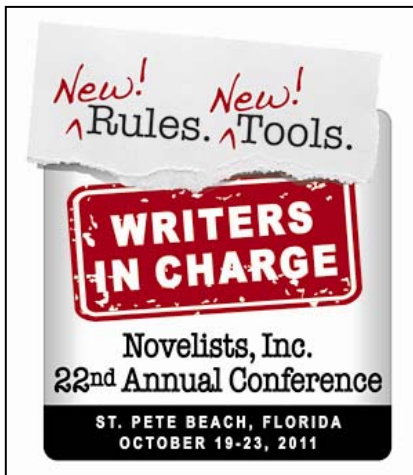


Google Book Settlement Rejected

Judge Denny Chin finally ruled on the Google settlement, declaring the statement “not fair, adequate or reasonable” and stated that it goes “too far” and “would grant Google significant rights to exploit entire books, without permission of the copyright owners.” He identified a number of concerns and suggested one critical change that could render it acceptable: changing the terms for authors from opt-out to opt-in. He urged the parties involved “to consider revising the ASA accordingly.”

Macmillan CEO John Sargent issued a statement on behalf of the Association of American Publishers indicating that the organization is willing “to work together with Google, the Authors Guild, and others to overcome the objections raised by the Court and promote the fundamental principle behind our lawsuit, that copyrighted content cannot be used without the permission of the owner, or outside the law.” Authors Guild president Scott Turow said working toward a new agreement is “a top priority for the Authors Guild.”

Google said the decision was “clearly disappointing” and will be considering its options.



What happens in Florida this October won't stay in Florida!

**Note: Please see the end of this column
for speaker announcements!**

Recently I've had to explain who NINC is and what NINC is to people who contact me with requests to be a part of our annual conference; to speak or give workshops. I get to thank them for their interest, of course, and then I get to tell some of them that, no, we're not looking for any workshops on how to write a query letter, or how to prevent sagging middles (of our books, our books!), or how to find a publisher.

I get to tell them that NINC members are all multi-published, represent every genre of popular fiction, and that what NINC is about is "the business of the business."

I get a not-so-small kick out of doing that. Why? Because it reminds me that *NINC is the only writers organization founded on the proposition that its members already know how to write*; that NINC is a six hundred-plus member talent pool of proven professionals.

What I sometimes don't get such a kick out of is that NINC is at times also known as "the best kept secret in writers organizations." Every year NINC sends out about two hundred invitations to industry professionals. Editors and publishers representing every genre of popular fiction. Literary agents, Website designers, booksellers, industry bloggers, publicists, the media. On and on. Once we "hook" them, they want come back, again and again, because once they've been to a Ninc conference they know who we are. They know we *aren't just an interested audience, but an interesting audience.*

They recognize our talent pool, our professionalism. At a NINC conference, you'll actually see these industry professionals taking notes in workshops, because a NINC conference is all about information. Oh yeah, and that we know how to show them a good time (there's not much of a down-side to be found at a venue like the TradeWinds Island Grand Resort, located right on the beach in St. Pete, for instance).

But let's get back to that "best kept secret" part. NINC does everything it can to promote the conference, to make the industry aware of the conference. This year, in addition to mailing invitations to every publishing house, every genre, as many agents as we can, and to any other industry professional our members ask us to contact, we're also Tweeting, Facebooking, blogging (none of which I understand personally, which is one of the many reasons I'll be taking lots of notes in Florida this October and then coming home gratefully clutching my NINC binder chockful of how-to's about all of that and more).

We've got something called "badges" up on the website (Members Section, click on the hotlink beneath the conference logo "Help NINC by advertising the NINC Conference on your site," <http://ninc.com/conferences/2011/badge.asp>). One badge is purely about the conference, the other also includes the information that you are a member of Novelists, Inc. You can put either badge on your website, your Facebook page, your blog, where it becomes a nifty hotlink to our website conference page.

Why should you do that? Why should you even care about the conference if you're not able to be there in 2011?

When NINC has a conference, it isn't only the members who attend in person who benefit or who are exposed to the valuable information disseminated there. We report what we've heard and learned in *Nink*, for all NINC members. Beginning with last year's conference, we preserve those *Nink* articles in a special section at the website, for all NINC members, and for all writers. The informational how-to (as well as where-to and who-to) binder we'll hand out in Florida will also be made available for download on the website.

In other words, as the headline reads: *what happens in Florida this October won't stay in Florida.* You don't have to be there in order to have input on *who* will be there, and learn from what is shared there. No, it's not quite as good as

being able to listen in person and ask your questions in person, but the conference serves as an important window on the publishing world, for *all* NINC members.

So, attendees as well as those who can't be there in person this year, how can you help? The badges are nice, but nothing beats word-of-mouth—in this century, that means the Tweeting, the Facebooking, the blogging, etc. All NINC members can help out with that.

Putting the new technologies to one side, the most important things NINC members can do to bring more industry professionals to our conference, this year and any year, are:

1. Contact Ninc Talent Scout Karen Tintori Katz at ktinti@aol.com, or me, at kcmi@aol.com, if you want to be sure your editor, agent, or other favorite industry pro you know or would love to hear from has been invited.
2. Talk with your agent, editor, whomever, about the conference. We sent out “Reserve the date” postcards prior to the snail mail invitations on their desks now, but there are a lot of conferences out there, and you want them to know why *New Rules, New Tools: Writers In Charge*, including the special one-day *The New Publishing—Welcome To Tomorrow*, is the one conference they need to attend this year.
3. And while you're at it, talk about NINC *beyond* the conference. Tell people why you belong, how important NINC is to you, how the information you get via NINC helps you in your career, how sharing with your peers is not just an information stream, but a home you've found, a place where kindred souls understand where you're coming from and where you want to go. *NINC is not a one-trick pony—NINC serves the whole writer.*

Let your agent, editor and others know what NINC offers industry guests: full access to the one-day session and all daytime workshops during the main conference, at no cost. They may also attend any offered group meals, also as NINC's guest. They'll receive a one-year complimentary subscription to *eNink*, the best newsletter in the business. We'll give them access to our conference rate information in order to reserve their rooms at the Tradewinds at the lowest possible cost to them. And the chance to perhaps be part of a panel of experts during the one-day and/or at one of the workshops offered during the main conference, depending on availability.

Then direct them to the website conference center and the Industry Registration form: <http://ninc.com/conferences/2011/index.asp>. We'll take it from there!

But don't stop with your editor and agent. The one-day, *The New Publishing—Welcome to Tomorrow*, is open to *all* writers, not just NINC members (oh, and if you're registered for the conference, your spouse or other guest can attend the one-day for only the cost of meals). An educated, “business of the business”-savvy body of writers is every writer's best friend (not to mention those spouses, etc., who sometimes have no clue what we're talking about!).

So, while only NINC members and industry professionals are eligible to attend the entire conference, tell your writer friends about the One-Day Program Registration information, also available on the conference website page: http://ninc.com/conferences/2011/program_registration.asp. If the writer is already eligible for NINC membership, there's also a hotlink there to our Join NINC page (the better bargain is to join, and be able to take advantage of the entire conference).

And whether you're a NINC member registered for the conference, are thinking about registering for the conference, or are just plain interested in more—and much more timely—information about the conference, send a blank email to BeachNinc2011-subscribe@yahoogroups.com and I'll get you signed up (remember, NINC members only for this loop, please).

Now, for that promised speaker announcement. The lists have been available on the website since March 1, and there will be other announcements that weren't available before the deadline for the April *Nink* (and there will be more to come!), but here are a few that didn't make the last issue:

Linda Quinton, Associate Publisher and VP of Marketing at Tor Books, a division of Macmillan Publishing. Learn more about Linda and Tor at <http://us.macmillan.com/torforge.aspx>

Don Weisberg, President of Penguin Young Readers Group. Read more about Don at <http://us.penguin.com/static/pages/aboutus/bio-weisberg.html>

Angela James, Executive Editor, Carina Press. Read more about Angela at <http://www.ninc.com/blog/index.php/archives/editor-angela-james>

See you in the workshops—and on the beach!

— Kasey Michaels, 2011 Conference Chair

Nink FeedbackLoop

Challenges

Okay, folks, I've received some excellent and entertaining entries to the Eight-Word Story challenge issued in February's Nink. I'd love to receive a few more before I put them in an upcoming issue! To refresh your memory and jog your creativity, let me remind you that we're looking for the best examples of hint fiction/flash fiction that NINCers can produce—in eight words.

The next challenge is the Alphabet Story. Write a short (really short!) story in twenty-six sentences. The first word of the first sentence must begin with "A", the first word of the second sentence must begin with "B", and so on through the alphabet. If you've never tried it, it is more challenging than it seems.

There's no time limit, no rules other than those stated above, and no limit to how many you can send me. Send them to me at Marianna@MariannaJameson.com and I'll run them in upcoming issues. Have fun!

— Marianna

Volunteer Sought for Next Page

We have an opening for a volunteer or volunteers. Neff Rotter, who is the genius behind the Next Page listings on the NINC website will be leaving the position beginning with the June edition. The job includes collecting book listings, cover images, author/pseudonym, title, publisher, month of publication, ISBN and blurb. This involves no hunting on your part! It's easily done by posting for the info on Ninclink a few days before the end of the month. Once collected, you get it into the Next Page format, upload as an HTML file and onto the NINC website. Lastly, you announce the current listings on Ninclink. Neff has graciously agreed to help the new volunteer get comfortable with the position. If interested, please contact Donna Fletcher at donna@donnafletcher.com.

Business Briefs

— Compiled by Sally Hawkes

Border's Fallout for Barnes & Noble

Barnes & Noble put out their third quarter results after Borders filed Chapter 11. There are anticipated benefits for B&N after the clearance sales since they were in direct competition with an estimated three-quarters of Borders' stores. The B&N report stated print sales were half the e-book sales from BN.com, and it is speculated that B&N has 25 percent of the e-book market. Although BN.com still isn't showing a profit, sales were up 64 percent due to Nook and e-books sales. CFO Joe Lombardi says the retail bookstores are an integral part of the digital strategy and are responsible for the most Nook sales.

PW Daily, 2/22/11

Apple's in-app rule and book purchasing

Apple is enforcing their developer guidelines, which basically provide that Apple will always get a 30% commission on web purchases. Non-Apple-developed apps can't provide a link that will allow users to access a web storefront outside the Apple app, because they must also offer an in-apps access to match. The deadline is June 30 and the announcement came with the release of iPad2. Most app purchasing from Amazon, B&N, and others have provided a bypass of Apple through a web outlet. iPhone and iPad users can initiate a purchase to a web outlet, but it will be easier to use the in-app choice.

PW Daily, 2/22/11

Ask the Lawyer

By Robert Stein

In light of the language that has appeared in recent reversion-of-rights letters from a major New York publisher, which noted that “that all rights to reproduce our edition of the Work remain our property and that if our edition is reproduced in total or in part by any photo offset process, a fee will be required which can be negotiated with us,” we posed the question to literary attorney Robert Stein:

What rights does a publisher have to claim ownership of “their version” of a work once rights have reverted, and what constitutes “their version”?

Robert Stein:

I have not discussed this issue with anyone from [the publisher in question], but I am nevertheless fairly certain that the publisher is not asserting a copyright interest in the author’s text. For that matter, given that the publisher in most instances registers the work for copyright in the US copyright office in the name of the author, it would be very, very difficult for the publisher to support any such claim.

Note, though, one exception: if the publisher has added any materials (such as a third-party foreword, intro, index, or illustrations), the author would need the publisher’s (and/or the third party’s) permission to reprint those materials. The same is true of the cover of the book. In most instances, the cover artist would have a strong claim against an author who used the artist’s work without his permission. Sometimes the publisher pays the artist separately for each edition of the book.

I believe the publisher is asserting rights in the *design* of the book: the choice of fonts, the layout of text on each page, etc. That is why the publisher’s note refers to a “photo offset process,” which would, of course, copy the publisher’s design.

I believe it is quite safe to use the published text (including any edits suggested by the publisher) without publisher permission in a post-reversion edition, so long as the publisher’s typesetting and design are not copied, and so long as the publisher’s cover and other publisher-provided materials are not used. ▲

Law Office of F. Robert Stein
478 2nd Street, Brooklyn, NY 11215
(718) 369-0998 • (718) 369-0076 Fax
F.RobertStein@nyc.rr.com
www.pryorcashman.com/attorneys-119.html
www.imdb.com/name/nm2201485

Of Counsel,
Pryor Cashman LLP
7 Times Square
New York, NY 10036

Ask The Lawyer is just one of many services Novelists, Inc. provides membership. And as the publishing world continues to change rapidly, the member services of NINC will keep our writer-members cued-in to the important issues of the writing life.

Urge your writer friends to check NINC out at:

<http://www.ninc.com>

The Art of Interviewing: Pitfalls, Pratfalls, and Shortfalls

Question: In my story, I have a scene in which the P.I. is interviewing an intoxicated witness who, out of the blue, confesses to being the murderer. Unfortunately, the P.I. has no recording equipment. Later, she returns to re-interview him, but he's disappeared. What can my P.I. do?

Answer: Your P.I. can still testify about the witness's confession, or admission, in front of a jury at the charged defendant's trial. However, this third-party admission as relayed by the P.I., without corroborating evidence, will most likely not convince a jury.

As the title of this column states, interviewing is an art, and includes its share of pitfalls, pratfalls, and shortfalls. Private investigators often conduct interviews, typically on behalf of attorneys for cases being litigated. To conduct successful interviews, a P.I. must have good people and communication skills, and know how to elicit the desired information without falling prey to errors of ethics and omissions, equipment malfunctions, and simple human error, which we'll call pitfalls, pratfalls, and shortfalls for this article. Although these failings can undermine a real-life P.I.'s investigation, they're great in fiction because they can add depth to a character, introduce a plot twist, or notch up the tension.

Pitfalls

Pitfalls are unsuspected traps in an interview that typically surface after its conclusion. For example, an investigator completes an interview with a friendly witness who identifies a criminal. But the P.I.'s success is short-lived when she later learns this witness changed his story, and now claims the investigator misrepresented what was said, or accuses the investigator of being threatening or intimidating. Why would a seemingly friendly witness do this? A few possibilities are to cover his involvement in a crime, to protect the accused or the real perpetrator, or to get out of being subpoenaed to court. Regarding the latter, witnesses who have failed to show up in the past for their own court obligations might be concerned that testifying at others' trials means they will be taken into custody on the spot for their own problems. And they're right.

Unfortunately, the law will step in if there's reason to believe that an investigator caused an average, reasonable person to become fearful, in which case the investigator can be charged with intimidating a witness. Not a good scenario for a real-life P.I., but great fodder for a fictional one.

Here are a few tips for how an investigator might protect herself from such pitfalls:

Choose a public place, such as a restaurant, for an interview. People tend to be on their better behavior when others are around.

Document the interview—for example, have an associate join the interview or film/record it from nearby. By the way, this filming/recording needs to be conducted in a public place (a coffee shop, a public parking lot) to avoid charges of eavesdropping.

Research the witness ahead of the interview. Knowing a witness's soft spots helps a P.I. avoid allegations of threats, manipulation, or intimidation.

Pratfalls

These are the dumb mistakes investigators sometimes make in real life, which can add humor, conflict, or tension in a story. For example, a P.I. rushes out to an interview and forgets to put fresh batteries into a digital recorder. Later, just as the P.I. has persuaded the witness to open up...the device dies. Or a P.I. tapes an interview in a noisy bar. Later, he realizes the bar background noises have blocked critical portions of the recording. For the malfunctioning recorder, an investigator might start taking notes. For the blocked recording, an investigator might piece together from memory portions of the interview, or better yet, pay a digital forensics expert to remove the background frequencies.

A more serious pratfall is not checking ahead of time if a witness or party to the case is represented by an attorney. If an investigator interviews a represented individual, the judge presiding over the case is likely to exclude the interview from evidence. Also, the investigator and the attorney she works for could be disciplined by their respective licensing authorities.

Shortfalls

In a courtroom, a lawyer should never ask a question he doesn't know the answer to. The opposite is true for a P.I. Outside the courtroom, witnesses may hint at an important fact, or inadvertently let something slip. A sharp investigator catches that, and follows up with questions on that thread.

Colleen Collins (www.colleencollins.net) is a multi-published author and professional private investigator. She blogs about investigations and writing at Guns, Gams, and Gumshoes, <http://writingpis.wordpress.com/>.

Please send your questions for Colleen to Nink Editor Marianna Jameson at Marianna@MariannaJameson.com and we'll put Colleen on the case!

Business Briefs

Random House Retirees

RH's new retirement package was offered for 45 days (through April 15) for staff members 50 and older. The package included new benefits for U.S. employees who have been with the company for at least five years. It was clearly stated that this was not an indication of overall downsizing for the publisher. *PW Daily, 2/22/11*

March Comes in Like a Lion With New E-book "Rules" for Library Sales

HarperCollins ended February by announcing limiting e-book licenses to libraries to 26 loans per title, effective at the beginning of March. The news came in a letter from the Steve Potash, CEO of OverDrive, a leading e-book wholesaler to libraries. The language said 26 loans per e-title had been determined by the publisher; when that limit is reached, a library would have to purchase a new license. Libraries purchase licenses to e-books because patrons aren't required to return e-books, since the ability to access them is designed not to work after the "return date." HarperCollins books have been removed from Overdrive's "Library Marketplace" while discussions continue. As this point, HarperCollins is the only publisher instituting this rule; some publishers, such as S&S and Macmillan, don't license. Boycotts against HarperCollins are under discussion in the library community. *(Note: Several librarians have been told by Amazon that they are expected to purchase one e-title per student if they are lending Kindles, but that's a whole other story that hasn't hit the press, yet.)* *PW Daily, 3/2/11*

New Reader Services from HarperCollins and Simon & Schuster

Bookperk.com—"a site for all of us book lovers" that promises "insider access to the world of books"—comes from HC with offers of exclusive access to merchandise and events, while S&S is promising readers "You ask, they'll answer. Ask authors questions...watch them answer". S&S is setting up *Ask the Author* videos with VYou.com. Bookperk.com's special offerings will run the gamut from signed first editions to chances to meet the authors, as well as discounts and other exclusive offers. *Ask the Author* will be home to online videos that answer specific reader questions. Authors need a webcam on their computer to record their responses. The videochats will also be available on the S&S reader group resource page, and can be posted on author's and reader's web pages, Facebook, and Twitter. *PW Daily, 3/7/11*

Not Your Usual Writing Advice — Embracing Change

BY JOANN GROTE

“Speak what you think now in hard words and to-morrow speak what to-morrow thinks in hard words again, though it contradict everything you said to-day.”

— **Ralph Waldo Emerson, *Self-Reliance***



Photo by Sabrina Ingraham

When a person embarks on change, the action can leave them feeling the same as when speaking a new-for-you truth: scary and exposed.

Outgrowing an old way of doing things or believing things, and embracing a new way, is uncomfortable. It's especially uncomfortable in the early stages, when the habit of the old way is still ingrained, and the new way isn't quite formed and, in fact, the person changing may not yet be able to fully envision the new way.

The discomfort grows when we've strongly stated our opinions about the old way. We wonder what people will think if we make a change. Even if a writer hasn't stated strong opinions about a subject, others—readers, editors, agents, reviewers, family, and friends—might hold expectations the writer is wary of disappointing. The discomfort can reach monumental proportions when a writer fears the changes will affect his or her career, finances, reputation, or relationships.

Unless we grasp the courage to move beyond the fears, to leave the old behind and embrace the new, we will stay in that uncomfortable and unproductive place. In that place, creative energy, joy, and enthusiasm are blocked, and so is the contentment and productive energy that comes from living in our truth. We stall. There is no growth without change.

There are many changes a writer can make—or wish to—that are frightening to live through, even if, to outsiders, those changes seem minor or natural, and even if, in retrospect, the anticipated negative consequences do not come to pass. Changes that might frighten a writer include a decision to accept a contract with no advance; signing a contract for a series of books due in a short time-frame; signing a work-for-hire contract; challenging his or her ability and talent by taking a chance on a new direction with a push from the publisher toward the *New York Times* bestseller list; choosing to ghost-write a book; self-publishing an e-book or a print book; moving to a smaller publisher; moving to a larger publisher; changing genres; or changing their writing process.

In her autobiography, Agatha Christie said she grew to hate her character Inspector Poirot. The readers and, therefore, her publisher, loved him. Stories about him meant a sure-sell. She continued to write them, but wished to tell other stories. She had bills to pay, after all, like all of us. The Poirot mysteries are still well-loved, but what stories from Christie's wonderful imagination did the world lose forever because she used the time to write more Poirot stories?

Obviously, few of us share Christie's status with readers, but we can face similar dilemmas if what we desire to write changes. All my novels to date were published in the Christian marketplace. I spoke my truth

within them, and it's possible I might want to write more in the future. Yet the stories capturing my imagination now won't fit that market. Fears engulf this kind of change: Will I find enough new readers to sustain the publication of the books I want to write? Will my old readers hate me? If I try to remain in my old niche, will I hate myself?

My choice so far is to quit submitting to the old market and write the stories that call to me now. I feel in doing so I'm following Emerson's advice quoted at the top of this column—advice that seemed much easier to follow in my outspoken, opinionated, inexperienced 20s when I first read it. Today, I find it terrifying to live by that advice—and absolutely essential to my life in general, and my life as a writer in particular.

All but one of the novels I've published, I wrote from an outline. I might have written a few scenes or the first chapter or two before preparing an outline, but before or near the beginning of writing the book I'd write an outline or synopsis, the more detailed the better. Writers often say their final stories barely resemble their outlines, but my stories seldom strayed from my original vision. For years I advised other writers, *If your method isn't working for you, try working with an outline*. Though I didn't put it into words, I believed outlining would benefit every writer for every book. It seemed second nature to me to turn the chaos of beginning creativity into a logical path to story via outline.

The outline for my work-in-process is sketchy, more a smattering of notes than an organized story template. It basically says, "This happens somewhere in the story, and this happens somewhere in the story, and I think this is the ending but maybe not, and it might start here or there, and maybe somewhere along the way this person shows up, or maybe not. Maybe I should add a sub-plot taking it this direction, but how will that mess up the other plot idea I really like?"

For months, the writing dragged. I thought if I only got the outline down, the problem would resolve itself. I'd try to form my notes into something resembling an outline, but it never fell into place. Instead, I struggled along, writing scenes out of order, or just a snippet of a scene, or staring at a blank screen, not writing anything because I thought I must write the story in a logical order. I despaired of the story ever coming together.

Then one day, something shifted inside. I realized this new way of storytelling is working for me. The hodgepodge of scenes allowed me to get to know my characters in a deep way. Though there's lots of work left, original writing and rewriting, I know where the scenes I've written fit into the story. Those realizations allowed me to trust in this new-to-me process, and that trust opened the creative gates and let the story flow.

If you're in a place of change, let die what is no longer working, no matter if it worked before, no matter how strongly and loudly you've voiced opinions on it in the past, and no matter if others agree. Let into your life what is working or what is claiming attention, and allow the new to release your creative energy.

JoAnn Grote is the award winning author of 38 books, including inspirational romances, middle grade historical novels and children's non-fiction. Contact her at jaghi@rconnect.com.

NINC is exploring the possibility of publishing back issues of the newsletter on the public page of the NINC website. If you have contributed to our newsletter in the past and do not wish your material used in this way, please contact the Nink Editor.

The Mad Scribbler

By Laura Resnick



“Do It Yourself”

"The space before each paragraph can be changed using the 'margin-top' style on tag p."

— **Kindle Direct Publishing formatting guidelines**

After researching and considering the various options for e-publishing my backlist, I decided to go entirely DIY.

One of the things that determined this decision is that, as I wrote last month, I have no idea what I will earn in the e-market. So I am reluctant to spend money, in advance of any earnings, on freelance packaging, copy editing, formatting, conversion, and/or uploading services; and I am willing to invest time and effort in this venture in order to keep my costs low. If you, by contrast, would rather spend money (or license e-rights to a reputable e-publisher) in order to save time and headaches, then do so. The choices that a writer makes about this (or any other professional matter) should be specific, individual, and best suited to her own needs, goals, and preferences. But you should certainly *research* your choices, because various sharks have scented money in the waters of e-publishing and are eager to feed on the earnings of writers who make ill-informed decisions.

The first step in my DIY venture was to prepare a manuscript. Electronic copy editing is only a recent development in my publishing relationships, so I don't have the copy-edited versions of my older books; therefore, everything in my available backlist needs to be proofread. And as long as I was visiting the first book in my e-pub project queue, I did a fresh line edit, too.

Additionally, one of the advantages of an e-book is that length is largely irrelevant to production and distribution costs, so I also wanted to include some value-added free content with the book (ex. an essay about the writing of the book; related background material; free samples of my other current and upcoming e-books).

For formatting and converting manuscripts to e-book formats, I bought Legend Maker software from ZappTek (www.zapptek.com), which converts a Rich Text Format (.RTF) document to Mobi and ePub formats, which are compatible, respectively, with Kindle and Nook, as well as with most other e-reading devices. Legend Maker costs \$49.99, and it's a good product; but it's only compatible with Mac OS 10.6 or higher. Out of curiosity, I looked at the e-book formatting instructions available at BN.com and Amazon.com—and they made me want to run screaming into the night. So if you don't own a Mac, I suggest that you either find similar user-friendly conversion software that's compatible with your system, or else hire a freelancer or service to convert your work to e-book formats.

Self-publishing via Smashwords is another possibility. All you need for that is a Microsoft Word document, and their formatting instructions are clear and easy to follow. Smashwords does the rest, converting

the Word document to multiple e-book formats and making the title available to multiple vendors. However, I decided not to self-publish via Smashwords for a number of reasons, which can best be summed up as: Although I like the convenience of their formatting and distribution mechanisms, I don't like the business model.

Anyhow, getting back to Legend Maker, I followed ZappTek's instructions (provided in a downloadable .PDF file) for formatting the .RTF document for conversion by the software. The instructions were daunting, but the process soon proved to be very manageable, albeit painstaking and rather tedious. Then I used Legend Maker to convert the book to Mobi and ePub. Although I had a couple of false starts with this, once I understood the instructions better, conversion went smoothly.

There are free downloadable applications that simulate Kindle and Nook e-readers, which you can use to see how your converted files will look when loaded into the devices. The Kindle Previewer application, available at www.Amazon.com, is very good. However, BN.com's downloadable Nook emulator—at least, the Mac version I tried—was full of programming glitches and kept crashing on me. The alternative I found for previewing ePub (Nook) files is free downloadable software called Adobe Digital Editions, which works with both Windows and Mac. It's available at www.adobe.com.

Using these simulators, I immediately noticed a lot of formatting problems in the converted book. So I fiddled with my .RTF document (hint: use the show/hide function), experimented with trying to fix the mistakes I had found, and converted it again. Some of the mistakes were fixed, others weren't. So I tried again. I spent *an entire day* on this, but I did learn a fair bit about the eccentricities of the conversion software and the reading devices.

The next day, armed with knowledge born of migraine-inducing experience, I formatted another book and ran it through Legend Maker. There were again some formatting problems, but fewer this time; and it took only a few more run-throughs to adjust this second book so that it looked acceptable to me on both simulators.

If you're thinking this all sounds like penance for mortal sin and you'd rather pay someone to do it for you, that's quite understandable. (I certainly felt that way a few times during this process.) But I strongly advise making sure that your arrangement with a freelancer includes their going through the converted document page by page, looking for and fixing formatting glitches. I also strongly recommend that you download the device emulators and check the results yourself before release, since *your* name is the one that will be on the e-published book.

Similarly, I advise against using any conversion process that would involve uploading a word processing document to a system which then converts and publishes or distributes the work without your having the opportunity to examine the final e-book format and make (or, if you prefer, pay someone to make) all necessary corrections. I've never once seen galleys for a print book that didn't need some corrections, and I've found the same to be true of e-book files. So, as in my print career, I want to see and know *exactly* what's in the final format that's being sold with my name on it, and I want to be able to correct it to my own satisfaction. At the risk of sounding like I'm channeling Martha Stewart, self-publishing should never mean *sloppy*. I want my self-published work to look as good to the reader (who deserves a polished presentation no matter *who's* releasing the book) as my professionally published books do.

However, keep in mind that the appearance of the final text will be subject to programming specifications on readers' devices as customers make individual choices about font size, margin size, and page background. So don't let it bother you if, for example, there's one lonesome line taking up a whole page at the end of a chapter; individual device programming is what will determine whether or not readers see the same thing.

Once you've got your book cover (more about that in a moment) and your finished ePub or Mobi file, the next step is to upload the e-books to online booksellers, so that readers can buy them and make you rich beyond the dreams of avarice!

In order to keep my head from exploding, I initially concentrated first on just two large, familiar markets: Amazon and Barnes & Noble. (More recently, I'm working on plans to expand my e-book distribution into additional e-stores.)

The Mad Scribbler

(continued)

In each case, you'll need to open an account so that you can upload books and get paid. B&N's self-publishing e-division is called PubIt, and you can get started by logging onto <http://pubit.barnesandnoble.com/>. Amazon's Kindle Direct Publishing site is at <https://kdp.amazon.com/self-publishing>. On both sites, the process for uploading an e-book and setting up its sale page (with things like your product description, the reviews you've collected, etc.) is somewhat self-explanatory, though not necessarily easier than falling off a raft and being eaten by crocodiles. There are voluminous instructions and FAQs on both sites (though they only seemed to address the things I was *not* having a problem with).

One of the things that surprised me about Amazon was how piecemeal the results were. Initially, *only* the book appeared in their online store. The information I had included about the book didn't appear until a few days later. Then Amazon linked the e-book to its original print edition. Then it duplicated the print edition's reader reviews and ratings for the e-book. The whole process took about a week, rather than occurring all in one go.

Meanwhile, B&N doesn't recognize that this is the e-edition of a title they carry in print, and the BN.com page of the print edition states there is no Nookbook available for this title. I wrote to BN.com about this (I couldn't find a PubIt email address, so I contacted BN.com Customer Service). As of this writing, there has been no change and no response. So I'm still wondering what to do about it.

Anyhow, my first self-published book, the e-edition of *Rejection, Romance, and Royalties: The Wacky World of a Working Writer*, is now available at Amazon.com and BN.com. I chose to start my e-venture with that particular title because it was a backlist book for which I already had an available cover; I'm making unauthorized use of the cover produced by the print edition's mysteriously vanished publisher. (If they ever reappear and suggest that I remove the cover, I will suggest they send me a royalty statement, since the print edition continues selling in retail more than two years after they disappeared, without my ever having seen a penny of royalties, even though.... But I digress.)

As for my other backlist books, the next step in my e-venture was for me to learn to create covers that would satisfy my DIY thriftiness while exemplifying my Martha Stewart philosophy of self-publishing. Needless to say, this was another steep, migraine-inducing learning curve; but I'm on my way now, and multiple e-books with my own original covers are now "live."

Laura Resnick's DIY'd e-books are currently available at Amazon.com and BN.com. As of last report, her head had not yet exploded.

Business Briefs

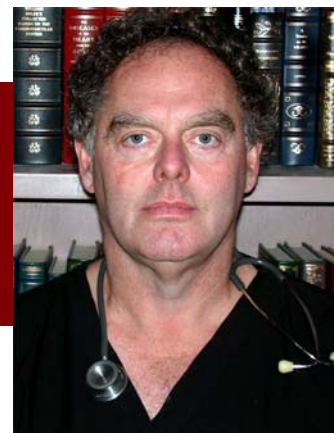
Nebula Award Nominees

Winners will be announced at Science Fiction and Fantasy Writers of America Nebula Award Weekend May 19-22 in Washington CD. See who the nominees are at: <http://www.sfwaweb.org/nebula-weekend/nebula-awards/nominations/>

PW Daily, 2/22/11

Forensic Files

By D. P. Lyle, MD



What Poison Could Be Placed on an Envelope and Cause a Quick Death?

Q: *I have a character who needs to die after licking an envelope. I would prefer a fairly quick demise. What sort of poison could the murderer use? It would need to be something that doesn't taste too awful or she'll stop licking it!*

A: There are very few poisons that work instantly in small doses, but cyanide would fit your needs and can be acquired fairly easily.

Cyanide is quick, nasty, effective, and even if someone attempted to save the victim, it is next to impossible because treatment must begin immediately if any chance of survival is to be realized. This is because cyanide is a "metabolic poison." It basically shuts down the ability of cells to use oxygen. The red blood cells cannot carry oxygen to the tissues and the tissue cells of the body can't use the oxygen anyway. It is as if all the oxygen were removed from the body instantly. This process is immediate and profound and leads to death in one to 10 minutes depending on the dosage. So, even if CPR were begun immediately, the cells still couldn't use the oxygen supplied by this process.

Symptoms would begin almost immediately in the delivery method you have chosen. The symptoms are rapid breathing, shortness of breath, dizziness, flushing, nausea, vomiting, and loss of consciousness. Maybe seizure activity. Then death. This happens very quickly, in a matter of minutes. So, the victim would develop sudden, severe shortness of breath, a flushed face, perhaps clutch at his chest, collapse to the floor, and die, with or without having a seizure in the process. Also, his skin would appear very pink and if the victim hit his head or scraped an elbow or the like and bled, the blood is a noticeably bright cherry red (This is also true in carbon monoxide poisoning). This has to do with a chemical reaction between the cyanide and the hemoglobin molecules in the red blood cells.

Potassium Cyanide (KCN) and Sodium Cyanide (NaCN) are your best bets. They are white powders with a faint bitter almond smell, which most people do not notice. Both dissolve readily in water and saline.

There is one caveat: Your killer must be careful in handling the KCN or NaCN. They are both readily absorbed through the skin and could do in your killer. Rubber gloves or a complete avoidance of direct contact with the powder would be wise.

KCN and NaCN are used commercially in metal recovery such as extracting gold or silver from their ores and in electroplating such metals as gold, silver, copper, and platinum. They could be pilfered from a jewelry or metal plating company or the like. They are also sold by several chemical supply firms.

In your story, the powder could be dissolved in water, applied to the envelope glue, and allowed to dry. When your victim licked the glue, he would develop the above symptoms within a very few minutes and would then collapse and die. This could take as little as two or three minutes.

Website: <http://www.dplylemd.com/>

BLOG: <http://writersforensicsblog.wordpress.com/>

NINC Bulletin Board

COMPILED BY SUSAN LYONS

**Do you have info
for the Bulletin Board?**

Send it to Susan at
susan@susanlyons.ca

NINC Online

NINC Blog: Volunteer Needed! You can earn a small stipend, make contacts, and promote yourself.

I'm looking for a volunteer willing to get one industry guest for the blog each month for the next year. Pay is a small stipend (\$25) and your photo and bio to promote yourself. If you're interested, email me. Patricia Rosemoor (patricia.rosemoor@gmail.com)

Bloggers Needed!

NINC's blog is a large part of our online presence and a great way to promote your work. Please sign up to blog by going to the YahooGroups NINC Calendar. We also feature industry professionals, so pass along suggestions—e.g., your own agent, editor, publicist, website designer, cover artist, etc.

— **Patricia Rosemoor**

NINC on Facebook

Don't forget we're on Facebook, too. Please visit often and share your news and ideas. Let's make it a happening place!

Adventures

at the NINC Website

Want to talk CIA-speak? For example, might your heroine or hero be involved in deploying mission-critical systems in support of the CIA's cyber-defense mission? Thanks to Marianna Jameson, the Members Only Reference page of NINC's website now has loads of CIA links.

Or are you a hurricane aficionado? You can follow tropical storms and virtually anything else to do with space and weather through NASA links, also provided by Marianna. For hurricanes: http://www.nasa.gov/mission_pages/hurricanes/main/index.html.

How about downloading a free copy of *The Kama Sutra*, *Adventures of Huckleberry Finn*, or *Pride and Prejudice*—completely legally? Visit Project Gutenberg for 33,000 books with expired copyrights: <http://www.gutenberg.org/>.

Check out the Reference page for dozens of useful online resources. If you have sites to add, email susan@susanlyons.ca.

Next Page Needs New Volunteer

NINC is seeking a volunteer to step into the role of compiling Next Page listings for the web. Please read the complete details on page 8. Neff Rotter will guide you into the process. NINC...and Next Page...need you!

What's Going On with Other Writers' Organizations

Note: The following is provided for member information and does not constitute an endorsement by NINC of the organizations or activities.

The Screenwriting Conference in Santa Fe – May 27-31; Santa Fe, NM. Designed to teach the art and craft of writing a screenplay that is saleable to Hollywood. This extraordinary learning experience is a unique opportunity to learn from some of Hollywood's most successful screenwriters and screenwriting teachers. For info: <http://www.scsfe.com/conference>.

National Black Book Festival – June 10-12; Houston, TX. Features a pavilion of authors, including those who are notable and new; workshops and seminars; a spoken-word poetry slam. For info: <http://www.nationalblackbookfestival.com>.



WRITING is TAXING

By Diane Kelly

Give and Take

Publishing is a business with a lot of give and take. One author may help another by critiquing unpublished work, inviting the other to guest blog on her site, or by arranging an introduction to an editor or agent. As a sign of appreciation, the second author might give the first a gift of some type. In that same vein, an author may take an agent or editor out to dinner to show gratitude for their work in selling and editing their books. Such gifts promote good business relationships and are common and accepted in the industry.

But is the cost of the gifts deductible?

Maybe. Maybe not.

The IRS is a bit chintzy when it comes to business gifts. Generally, you can claim a deduction for the cost of business gifts up to a maximum of only \$25 per recipient per year. Given that the deductible amount of business gifts is so low, it's important to know the rules . . . and how to get around them.

What Does the \$25 Limit Include?

The cost of the gift item is included in computing the \$25 limit, of course. But, fortunately, incidental costs are not treated as part of the gift's cost and are deductible in full. Incidental costs are those that don't substantially increase the gift's value, such as gift wrapping, packaging, and shipping expenses, as well as insurance on the gift. Engraving on a gift item such as jewelry is also considered an incidental expense and is not included in computing the \$25 limit.

On the other hand, if the item adds substantial value to the gift, the cost would be included as part of the gift's cost. As an example, the IRS has indicated that if an ornamental basket used to package fruit costs a significant amount, the basket would be considered part of the gift's cost.

Can You Avoid the \$25 Limit by Making the Gifts to Your Publishing Company or Literary Agency?

Nice try, but no such luck. The IRS says that gifts made to a business entity that are intended for the personal use of the company's owners or staff are considered gifts to those individuals. Therefore, you can't circumvent the \$25 limit by making the gift to a company rather than directly to the individuals if the gift is of the type that will be used by individuals. For example, if you send ten books bags that cost \$30 each to your publishing company and the books are distributed to your editor and production team, your deduction will be limited to \$25 for each recipient. The remaining \$5 cost per person is not deductible. Bummer, huh?

Do Gifts Include Promotional Items?

Here's some good news. For purposes of the \$25 limit, inexpensive promotional items are not treated as gifts. This means that you can give an individual lots of these items and you don't have to count them toward the \$25 per person annual limit. ▶

A promotional item is not considered a gift if:

1. The item costs \$4 or less and is one of a number of identical items that you widely distribute; or
2. The item is a sign, display rack, or other promotional material to be used on the business premises of the recipient.

Under these rules, inexpensive mass-produced items such as pens, bookmarks, or desk sets are generally not considered gifts. Likewise, posters or displays provided to booksellers would not be considered a gift. You can take a full, unlimited deduction for these items.

Does Entertainment and/or Meals Count as a Gift?

Here's where it gets complicated.

If you take a business associate out for a meal or some type of entertainment (i.e. you take your editor to dinner and/or the opera), the expense will be treated as a meal or entertainment expense rather than a gift. You are not subject to the \$25 limit for such meals and entertainment. That sounds like good news, right? But don't forget that, under a separate rule, meals and entertainment are only 50% deductible. Darn!

If you make a gift of pre-packaged food or beverages (a bottle of liquor or box of chocolates, for instance), the expense should be treated as a gift rather than a meal. For this reason, it would be a good idea to make sure any food or drink items provided as gifts cost \$25 or less per recipient so that you'll get a full deduction.

To make things even more confusing, the IRS says that if you give someone a business gift of tickets to an entertainment event that you do not attend with the recipient, you have the option of treating the cost of the tickets as either entertainment (which would be 50% deductible) or as a gift (subject to the \$25 annual limit per recipient). In such cases, you should choose the option that gives you the highest deduction. But don't forget: if you attend the event with the person, you must treat the expense as an entertainment expense, discussed above.

Want to Learn More?

If you'd like to read more about the gift rules, see IRS publication 463 "Travel, Entertainment, Gift, and Car Expenses" available at the IRS website, www.irs.gov or this direct link: <http://www.irs.gov/pub/irs-pdf/p463.pdf>.

For more tax tips, check out the "Tax Tidbits" on the "Extras" page of my website, www.dianekelly.com. These tips are continuously updated, so check back often to keep up to date with tax law changes that could affect your writing business.

Diane Kelly, CPA/Attorney at Law, writes romantic mysteries for St. Martin's Press. Her debut novel, Death, Taxes, and a French Manicure, will be released in September 2011.

Publishing Services by Huseby Agency, Ltd.

NINK a publication of Novelists, Inc.
An Organization for Writers of Popular Fiction
P.O. Box 2037
Manhattan KS 66505