

INDEPENDENT PERSPECTIVE

Newsletter of the Consulting and Independent Contracting Professional Interest Committee Summer 1994

Two recent incidents involving two separate contract projects made me glad that I had spent some time planning my contract terms with each client. After networking with several fellow consultants and independent contractors, I discovered that they too had run in-

the eventual client, a state health agency. When phase two of the project contract negotiations between the state agency and the project contractor reached an impasse, the project manager alerted all subcontractors to prepare for a contract shutdown. I found these tips to be extremely helpful:

control that result in removal from the client's premises." I usually shoot for 20 days but will settle for 10. In my case, I offered to continue to work off-site for those 10 days. But if I couldn't, I didn't see why I should be penalized financially.

Contracting tips to protect your business

Two case studies
by Donald S. Le Vie, Jr.

to the same two problems at one time or another. Let's take a look at each one.

Plan for shutdowns

Regardless of your specialty, contract or project shutdowns are a fact of life for independent contractors and subcontractors. They can be a major disruption to cash flow or, if properly planned, can be only a minor inconvenience. A contract or project shutdown may lie beyond your control, but there are some things you can do to minimize any negative effects.

Remain emotionally detached from the situation. Let those with the responsibility and authority for contract negotiations be the bad guys. Maintain an "even keel" in both attitude and demeanor in spite of what's going on around you.

Plan proactively before you sign work-for-hire contracts. Try to anticipate situations that could threaten your work and your savings. You need to make sure safeguards are in place that protect your interests should something go awry that is beyond your control—such as a contract shutdown.

Protect yourself with a clause in your contract that states: "Client agrees to compensate contractor at the agreed contract rate for up to 20 work days for any contract shutdown actions beyond the contractor's

Release clause

You also might want to include a clause that releases you from the contractual commitment should the shutdown last longer than what the contractor has agreed to pay you for. Something like: "Should a project/contract shutdown last longer than the 10 days (or 20 days), the agreement between the contractor and client is null and void without penalties to either party." This way, you're free to pursue other contract opportunities.

Fortunately, in my case saner heads prevailed; the parties reached an 11th hour agreement, thereby averting a project shutdown.

Maintaining a professional demeanor through such a tense and stressful period could be financially
(see *Tips*, page 4)

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PERSPECTIVES

notes from our
new manager
by Karen Steele

Greetings from deep in the heart of Contractor Land. Where is Contractor Land, you ask? Anywhere I hang my mouse pad, that's where. If you're reading this article, you are probably a lot like me—independently employed and happy about it! Life is good for us in Contract Land.

But could it be better? That's a question we'd like to explore this year. What about your working situation makes you the happiest? And what are your problems? Is there a way the C&IC PIC could help? I suspect there is.

This year, let's get the *Independent Perspective* and the PIC to serve as a forum for ideas and information. Let's talk about what works for us, and what doesn't, and why. Let's ask for

help when we need it, and give it whenever we can. Here's a beginning for the forum.

The Best Part

The best part of contracting, in my opinion, is the ability to stay busy. Clients who hire us have needs and deadlines, and we always seem to be busier than one-armed paper hangers. The technology is usually fresh, the ideas flow, and contractors seem to get the "best" parts of the projects.

I love to interview new companies and clients. I love the energy of being involved in a new project. Working on maintenance projects as a permanent employee was boring. Shoring up the training materials for a moribund system, trying to make a batch system "appear" to be real-

time. (No, you really don't want to know how they did that.)

Now if a project is slow, or the technology is old fashioned, I don't have to take the assignment. My part of the world is busy with a wide-open market that sustains my attitude, and I love that.

Problems?

My problems seem to revolve around tax time—I always make the deadline, but it's always a struggle. I resent having to be bookkeeper,

(See Steele, page 6)

INDEPENDENT PERSPECTIVE

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From the editor

More passages are happening at the center of the C&IC PIC. Charley McWha (see related article) will be sorely missed as Manager. We hope to hear from her occasionally as a contributor; the gift of historical perspective in such a fast-growing group is invaluable. We extend a warm welcome to Karen Steele, of Dallas, TX, as our new Manager.

The *IP* will now be printed and mailed out of Dallas, TX (note the return address), thanks to Jo Byrd, our new production coordinator. However, as before, please continue sending your

contributions to me at the return address in the masthead.

The dialogue on contracting continues this issue with a collection of wisdom on work-for-hire contracting by Donald Le Vie. Chris Juillet has added to our information on deducting expenses incurred by having an office in the house. And news of one of our most recently-formed PICs, of the New Mexico Chapter, comes to us by way of Daniel O'Connell. Thank you all for your contributions.

Happy reading!

Susan

Focus on Consulting

New home office legislation proposed

by Christopher Juillet

More than a year has passed since the Supreme Court reaffirmed the IRS' interpretation of

rules curtailing deductions of in-home office expenses for independent consultants and contractors. Since that time, thousands, perhaps hundreds of thousands, of self-employed professionals have been adversely affected by this ruling.

Soliman v. IRS

To recap, the Supreme Court in January, 1993, overturned a Tax Court decision allowing an in-home office deduction for Dr. Nader Soliman, a self-employed anesthesiologist.

While Dr. Soliman spent 10 to 15 hours of administrative time each week in his in-home office, the high court determined that he was not allowed a deduction for that office space, since he did not perform his principal work, that of anesthetizing patients prior to surgery, in his office and that therefore, it was not his "principal place of business."

The ruling reaffirms the Internal Revenue Service's interpretation of the current home office deduction rules:

The office must be used exclusively for business. Guest rooms or dens used at other times for non-business purposes, such

as watching television, are not allowable deductions.

The office must be used on a regular and continuing basis. Occasional or incidental use of the space for business purposes is not enough to qualify.

The office must be used for the convenience of the employer. For independent consultants this one is easy, since you are your own employer.

The office must be your principal place of business. If, as a computer consultant, you spend most of your time at your desk working for clients, no problem. If, on the other hand, you spend most of your time on client sites, you probably don't qualify under the current rules, even if your clients don't provide you with a permanent desk and chair. (This was the basis of the Supreme Court's rejection of Dr. Soliman's case.)

Proposed Fix

In June of 1993, Senator Conrad Burns (R-Montana) proposed legislation (S.1116) that would, if enacted, restore deductions for in-home offices "used regularly and solely for business purposes." The bill sets forth these criteria for determining whether an in-home office is truly one's "principal place of business":

- Is the office used to perform management or administrative activities that are essential to the trade or business?

- Is the office the only space available in which to perform such activities?
- Is the office essential to such trade or business?
- Does the worker spend a substantial amount of time in the office?

While Senator Burns' bill has merit, two newer companion bills have recently been introduced into the Senate and House of Representatives. Known as the "Home Office Deduction Act of 1994," Senate bill S.1924 (proposed by Senator Orrin Hatch [R-Utah]) and House bill H.R.3407 (proposed by Representative Peter Hoagland [D-Nebraska]) are identical. If enacted, they will amend the IRS code to define an in-home office as the principal place of business if:

"(A) the office is the location where the taxpayer's essential administrative or management activities are conducted on a regular and systematic (and not incidental) basis by the taxpayer, and

"(B) the office is necessary because the taxpayer has no other location for the performance of the administrative or management activities of the business."

The bills also extend the IRS code to include not only storage of inventory but of "inventory and product samples" as part of the test of whether an in-home

(see *Home*, page 6)

Tips (from page 1)

**“Murphy’s Law
will always work
against you”**

rewarding. My client renegotiated my contract for an additional 60 days and agreed to my higher “value-added” contract rate.

Limiting liability

There are three conditions that must be met for a client to succeed in a claim against you:

1. You entered into a valid contract (either in writing or verbally) with a client.
2. You materially failed to do what you said you would under the contract terms.
3. Your client suffers damages as a result of No. 2.

You can avoid being held liable by remembering these important points:

- understand the client’s problem as completely as possible;
- don’t overpromise a solution that you can’t deliver;
- use your value-added skills to in fact solve the client’s problem(s);
- obtain the full cooperation of your client and others as necessary in working toward providing a solution to his problem.

And be sure to heed these pitfalls:

- Don’t give fixed-cost estimates (Murphy’s Law will always work against you);
- Don’t give out free opinions (people may

hold you liable if they followed your advice and incurred damages as a result);

- Don’t use unprepared or unqualified subcontractors (you are still responsible for their work—check out credentials and references).

Make sure someone with signature authority signs off on all your work, thereby relieving you of any liability for errors, omissions, or technical accuracy. When you cover this contingency, your client can’t come back to you sometime down the road, claiming the work you performed was subpar. All you have to do is show him a copy of his signature on a project sign-off sheet, and you’re off the hook.

Cover your liability for meeting your client’s project timetable by including a clause in your contract that states:

“Documents presented to the client’s staff for technical/functionality review must be returned to contractor within XX days in order to meet project timetables and avoid cost overruns.

Documents not returned by the deadline will be assumed to be approved as written and submitted.” I use this clause in cover letters accompanying all review documents

and I’ve never had a problem with late reviewed drafts.


Cover all bases

If you really want to cover the bases, there’s always liability insurance. This topic could be the subject of a separate article, but essentially there are two kinds of liability insurance:

“Claims made” insurance, which protects you against errors, omissions, and negligent acts during the time the policy is in effect.

“Occurrence coverage” insurance, which protects you against claims arising during the policy period even if these claims are made after the policy’s lapse. Consult your insurance agent for more information on liability policies.

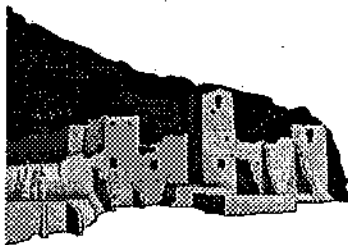
With just a little up-front planning and some foresight into the rare incidents that could have a negative effect on your business, you’ll be able to sleep better knowing you’re protected with an air-tight contract and/or a comprehensive liability insurance policy.

Donald S. Le Vie, Jr. is president of Austin, Texas-based DSL Technical and Scientific Communications, specializing in high-technology manufacturing and the Earth/space/environmental sciences. 

Upon request from *Independent Perspective's* editor, I have written

New Mexico PIC's First Year in Perspective

by Daniel O'Connell



**"New Mexico
is a huge
and sparsely
populated
state"**

this informal account of the organization of the independently employed technical publications folks in New Mexico and their far-flung C&IC PIC. We are affiliated with the New Mexico Kachina Chapter, which represents members living in the northern three-fourths of the state.

New Mexico's loose organization of C&IC PIC-ers began as a result of a Kachina Chapter luncheon workshop in Albuquerque in January, 1993. We estimated that 25 would attend, but 35 did. The meeting focused on a variety of problems facing STC's "independents"—paying taxes, legal status (i.e., incorporated versus sole proprietorship), marketing oneself, and so on. During the workshop, someone suggested we should have our own C&IC PIC.

New Mexico is a huge and sparsely inhabited state. It is the fifth largest state in geographical area; in the bottom three in population density. The state's technical publications people are clustered largely in three cities—Albuquerque, Santa Fe, Los Alamos—and their nearby suburbs. These cities are all

in the north-central, mountainous part of the state. A few other tech pubs folks live in such distant areas as Las Cruces (south-central), Farmington (northwest), and Carlsbad (southeast). Of about 90 Kachina Chapter members, 20 are also active in the C&IC PIC.

Wearing many hats

I was appointed acting chair of the PIC in June 1993, shortly after we started. I have chaired the NM C&IC PIC since then and will retire at the end of April 1994. Additionally, I assumed the other hats of Secretary, Treasurer, and Newsletter Editor because I could talk no one else into those jobs. I enjoyed all this for a while, but now there's not enough time. Hence my multiple resignations.

It is not clear who will be in charge after this, but our membership is entirely made up of capable businesspersons with excellent experience. Whoever replaces me will be well-prepared for his or her new assignment.

During '93 and '94 we held two meetings of our membership. The first featured a prominent local attorney talking with us on the topic, "Should you Incorporate?" In the second, a local C.P.A. who was well versed in our problems spoke knowledge-

ably on the topic, "Accounting for the Independent Consultant." Both speakers were volunteers, yet they were excellent.

A tight budget

To reduce expenses, we charged each participant \$5.00 and each supplied his or her lunch (we supplied coffee and soft drinks). After many phone calls, I was able to get both meeting places free—one was a local utility company's office, and the other was at a federation of local garden clubs. We were allocated \$100 for our first year, and spent none of it.

Many "outsiders"

A curious fact is that, for our first meeting, more than half the participants were neither STC members nor involved with technical publications. Yet they seemed pleased with what they learned.

Our most thriving specialty as independent writers and editors is the environment, health, and safety (ES&H) area. A close-running specialty is technology transfer.

High-technology manufacturing or software companies are rare here, and it's nearly unknown to be asked to revise or write a technical manual. Sandia and the Los Alamos National Laboratories are the

(See *First Year*, Page 6)

First Year
(from page 5)

**“health
insurance...the
most important
single problem
facing our
profession.”**

largest employers in technical publications, but a 1099-type contractor will find it almost impossible to work for them directly. I have succeeded in working for them only through an agency, and such agencies skim much of one's profit. It would be wrong to blame those businesses, and I do not. Still, we sometimes long for the opportunity to contract with the laboratories directly, as we do all other clients.

When work is scarce, one takes such honest business as one can get. For example, some of us double in public relations. I worked thus for two months this year, and

helped elect the mayor of the city where I live.

The most common complaint I hear among our C&IC PIC membership is the high cost or unavailability of health insurance. If affordable, it's seldom good, and conversely. The insurance companies available through STC are no bargain. I view this as the most important single problem facing our profession. Despite friends whom I respect who disagree with me, I support the Clinton National Health Care System. Paradoxically, I believe that its enactment will force more of us into independent contracting. Before the next three

or four years pass, I expect that about 50% of the STC members in our state will be independent. In twice that period, I believe the same will be true for STC members nationwide. It behooves STC to reinvent itself for that eventuality.

Greetings to you all from the Land of Enchantment, and a word of advice. Be sure of your livelihood before you relocate here. Daniel O'Connell and his wife, Juanita, are co-owners of Corrales Heights Innovative Publications Services in Rio Rancho, NM. Daniel was formerly active in the Silicon Valley Chapter and is a former V.P. of the Kachina Chapter. **IP**

Home (from page 3)

office is deductible. If enacted, the legislation will apply retroactively, beginning with taxable year 1992.

In order to best represent us, our U.S. senators and representatives need to know our views on pending legislation. For additional informa-

tion, contact me:
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Note: Thanks to Tara Pryde of Senator Conrad Burns' legislative staff for her assistance. Christopher Juillet is an independently employed technical writer, consultant and publisher.

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Steele (from page 2)

recordkeeper, and tax authority. I would rather not know about that part of my business—a very bad attitude for a self-employed person.

I also worry about things like health care

and retirement: are the choices I'm making in these areas the smartest choices? I don't trust sales people. I want to hear solutions from other contractors and consultants.

Send us your thoughts:

the best parts and the problems, the questions and the answers you might have. Let's get our forum going!

Karen Steele is the newly appointed Manager of the C&IC PIC **IP**

Being Manager of the C&IC PIC has been a wonderful experience and I deeply regret that

A note from the departing manager

by Charley McWha

**"I'll really miss
this job"**

increased duties in my present work situation make it impossible to continue. I believe strongly that the C&IC PIC has helped me to become more professional in my approaches toward my clients and colleagues. I believe equally strongly that any level of involvement with the C&IC PIC will have the same impact on you.

In leaving, I need to tell you all how truly grateful I am to all of the C&IC PIC team members who have carried the heaviest of the workload that allows this PIC to continue to

grow and to serve the needs of C&ICs. Susan Witter has been by my side doing a wonderful job of managing the newsletter. She has handled every situation with a calmness and clarity I only wish I could imitate. Bernie Cohen has managed the membership database so well that it has appeared effortless—I know that is far from true, but the appearance has made my job much easier. Cathy Kolecki, Anita Leininger, Fred O'Hara, Kevin Sunderman, Tom Underwood, and many others have each taken a leadership role in C&IC PIC activities, for which I have been deeply appreciative—thank you.

I have also been helped and supported in this position by the Officers, the Board of Directors, and the office

staff of STC—thank you. I am especially indebted to Chris Juillet for his constant support and mentorship, to Liz Babcock, for so graciously accepting my resignation and especially for making me feel that I will continue to be a welcome returnee whenever my situation again allows it, and to Annette Reilly and Larry Kunz for their support and advice whenever difficult questions arose.

Karen Steele has been selected to take over the position of Manager of the C&IC PIC. Over the past few months she has been a great help to me. Her enthusiasm and organized approach will, I am sure, enable her to accomplish whatever goals she sets for the C&IC PIC. Good luck, Karen!

I'll really miss this job... **IP**

Westward Ho!

The editor of the *Independent Perspective* has struck out for points west. I'm now taking up

residence in the serene seaside town of Bellingham, Washington. Make a note to send any correspondence relating to the *IP* there.

The address is 2416 Henry Sreet, Bellingham, WA 98225. (It's also listed in the masthead.)

—Susan Witter **IP**

About to join the ranks of publications by and for STC members is one aimed at independents: *Consulting and Independent Contracting Anthology*,

New STC Publication Just for Us

edited by Anita Leininger and Tom Underwood.

The 18 pieces in this 80-page collection are from *Technical Communi-*

cation, from conference proceedings, and from chapter newsletters. Cost is \$15 for members, \$25 for non-members.

The preface says, "This ...anthology is not just another collection of articles; rather it is a well-articulated representation of information designed to help the reader succeed as an independent contractor. If you want to be

one or if you are already an independent contractor and want to be better at running your business, this anthology presents several good ideas which might be of help to you."

Look for a review when a copy reaches the editor's desk; or contact the STC office in Arlington, VA (703-522-4114), for your own copy.

—Susan Witter 