

# Jam Session for Seasoned Freelancers

Brian Bass, with commentary from **Cathryn D. Evans**, **Sherri Bowen**, **Melissa L. Bogen**

The Jam Session for Seasoned Freelancers was born of the realization that when experienced freelancers get together and “talk shop,” the topics of interest and concern are often much different from those of both new and less-experienced freelancers. The open session is typically conducted with participants seated in a large circle where everyone is equal, and everyone is invited to ask questions and offer advice. Moving in 2020 to the virtual format proved that this open and interactive (gently controlled) session fluidly translates to the virtual environment.

As always, the Jam Session (held virtually in 2 smaller sessions instead of 1 large session) elicited a lot of important and insightful discussion. Several themes rose to the top: finances, contracts, and life after coronavirus disease 2019 (COVID-19). In this article, members of the Freelance Forum have joined virtually to add their comments to the topics that were discussed.

## FINANCES

Enacted and pending state legislation regarding how independent contractors are defined by law (and for tax purposes) was a hot topic. The issue began in California, where poorly worded legislation intended to protect certain gig workers like Uber and Lyft drivers engulfed nearly anyone who works for themselves. While many states have jumped on the bandwagon, a glimmer of hope has emerged. California is relaxing its law so freelancers who truly work independently can continue to do so. Hopefully other states will follow suit.

In other great news on the financial front, some freelancers have applied for, and actually received, Paycheck Protection Program loans amidst the pandemic crisis. It was noted that thanks to restricted travel and face-to-face interactions, freelancers' expenses are way down, while for many, their workload is way up. This is a good time for freelancers to raise their rates. One session attendee shared that a client actually asked whether they're paying her enough!

Speaking of being paid enough, it was universally agreed by session attendees that a freelancer who both edits and writes shouldn't charge different rates for those services. It was aptly noted, “Your value is your value no matter what you're doing.”

*I did not apply for a Paycheck Protection Plan loan for my business, nor did I apply for unemployment, despite having some “down time” during the quarantine, but am very happy*

*to hear that many AMWA members were able to benefit from these programs.*

*As far as the idea of sticking rigidly to your hourly rate regardless of the type of work (“Your value is your value no matter what you are doing”), I do not agree with this. While I certainly respect those who feel this way, I do not share this point of view.*

*I certainly would not hire someone to do a simple copy-editing or proofreading job and pay the same amount that I would pay an experienced medical writer. Why would I? I can hire someone else at half that amount, perhaps even less. (Note, however, that when I perform editing functions on a project I was hired to write, I do not lower the hourly rate for that part of a project; the rate for editing is lower specifically when I have accepted an “editing job.”)*

*Personally, I charge various rates depending on the job. For example, for Project Management, my rate is higher than for writing, and I charge more for writing than for editing. My rate for performing a Quality Control (QC) review of a regulatory document is slightly less than what I charge to write the document itself because this is not a mere “proofreading” job—the QC reviewer needs to know as much about drug development, regulatory guidelines, and complex format requirements as does the medical writer. On the other hand, if I hire someone to do an “editorial edit” and straight proofreading of a regulatory report, I will pay significantly less than the medical writer's or the QC reviewer's rate. Moreover, I sometimes have discounted my rate for a guarantee of a certain volume of work over an extended period. Finally, sometimes I charge less for a nonprofit organization than for a corporation, hospital, contract research organization (CRO), or drug company.*

*Probably the best I can say is that there are not and perhaps should not be any absolutes in this regard. I believe we need to be flexible depending on the situation.*

**—Cathryn D. Evans**

## CONTRACTS

There was a rousing discussion about protecting client information. While none of the session attendees reported experiencing a security breach, freelancers must be watchful for security language infiltrating their contracts. Case in point, there may be a

contract clause requiring the freelancer to pay to protect the client's data. The group agreed such language should be stricken from the contract, and there was discussion around the value of professional liability insurance in providing financial protection in the event a security incident is encountered.

Freelancers need to be careful and thorough when reviewing all types of client contracts. For example, there may be a purchase order for a project with a hidden twist: a link to a 20-page contract filled with fine print. Freelancers must be vigilant. The time to discover language that binds you isn't after the project has been delivered.

**Jam session point:** Freelancers need to be careful and thorough when reviewing all types of client contracts. Yes, please read contracts very carefully!! In at least 3 recent draft contracts for my services, there have been clauses to the effect that payment will only be made for "satisfactory" work, for example, "work that has been performed to COMPANY'S satisfaction and in accordance with the terms of the applicable Statement of Work" or "COMPANY will pay all undisputed invoices for services satisfactorily completed." (Underline emphases are mine.) These are untenable clauses without explicit, specific details about what constitutes "satisfactory" (and when I pushed back on this, none of the clients had any such list of details). A client could say your work is "unsatisfactory" if you made a typo or forgot a comma! And if there are no clauses or details about what, exactly, could or would be "disputed" in an invoice or how notification of, defense of, or any mediation of what might be disputed is handled, then this is a red flag, and you should either ask for those details or (better) just strike through that language in the draft contract. Additionally, be sure to always, always, get reciprocal indemnification wording (each party holds the other harmless...).

—**Sherri Bowen, MA, ELS**

**Key Message:** Always check contracts for double indemnification, and if the indemnification is one-sided, ask for double indemnification.

Contracts often have a paragraph on indemnification, which may look like this:

"[FREELANCER] will indemnify, defend, and hold harmless [CLIENT] from and against any loss, cost, liability, or damage of any kind arising out of all reasonable claims by a third-party made against [CLIENT] arising from the Services of this Agreement to the extent arising out of [FREELANCER's] (a) negligence or willful misconduct, (b) infringement of any third-party intellectual property, or (c) breach of this Agreement."

The indemnification clause is an attempt to shift potential lawsuit costs from one party to the other. Indemnification protects the indemnified party (in this case, the CLIENT) against

losses from third-party claims related to the contract. Such clauses are often used in medical writing/editing agreements because the risks associated with a party's nonperformance, breach, or misconduct are high.

In the clause above, the client is protected from the freelancer's negligence. As the freelancer, protect yourself from client negligence by checking contracts for double indemnification. If the indemnification is one-sided, ask for double indemnification.

With double or mutual indemnification, both parties agree to pay the other party for losses arising out of the agreement to the extent those losses are caused by the indemnifying party's breach of the contract.

One way to handle double indemnification is to have 2 paragraphs in the indemnification section of the contract. To use the clause above in double indemnification, add a second paragraph in which you switch the names [FREELANCER] and [CLIENT].

Alternatively and more simply, the double indemnification can be worded in 1 paragraph something like this:

"Each party will indemnify, defend, and hold harmless the other party from and against any loss, cost, liability, or damage of any kind to the extent arising out of its breach of this Agreement, and/or its negligence or willful misconduct."

—**Melissa L. Bogen, ELS**

## LIFE AFTER COVID-19

As mentioned earlier, many seasoned freelancers have experienced increased workloads since the pandemic began in March 2020. This is great news for our bank accounts. But there's concern that the volume and velocity of work isn't sustainable. Freelancers are grateful to be very busy through these unprecedented times, but too much of a good thing can burn a person out. That's exactly how a lot of seasoned freelancers are feeling these days. The increased workload, and opportunities to take on still more work, isn't likely to ebb any time soon.

Ironically, considering the Jam Session was held virtually, the "Zoom Boom" was identified as another aspect of the age of COVID-19 that has become at times overwhelming. Unnecessary and unwelcome are other words that come to mind. Videoconferencing is a good way to "meet" clients one would otherwise likely not get to see even without travel and gathering restrictions. But between the exploding number of videoconference platforms, the number of different ways in which videoconferencing is used, and the number of clients a freelancer might have who all want to videoconference, this has also become too much of a good thing.

I have not experienced a huge increase in volume of work during 2020. But I have seen a rather notable increase in head-hunters calling me to see if I am interested in a full-time job. Thus, I have the distinct impression that there are many drug companies and CROs hiring full-time writers over the last year. Opportunities seem abundant for those who wish to be an employee, even if working remotely. I suspect this is directly related to the increase in research for vaccines and potential treatments for viruses, especially COVID-19.

On the other hand, I have found myself being quite flexible during this time, undertaking a variety of activities. For instance, rather than focusing on “medical writing” per se, I have done QC reviews, editorial review/critique of papers, copy-editing as well as substantive editing, mentoring for prospective medical writers (especially those who wish to work in pharma/biotech), and a certain type of spiritual/psychological counseling for people undergoing extreme stress during this time.

I rather like this expansion of types of work, despite the fact that not all of them pay as well as medical writing in the pharma/biotech industry! I also like not having to travel to meet people—Zoom is just fine, thank you. This medium saves time and money for the medical writer as well as the client; I hope it continues even when travel and maskless socialization become routine again. I do agree with others that participating in too many Zoom meetings per day is quite tiring, so we need to use good sense when scheduling such meetings.

—Cathryn D. Evans

**Key Message:** Remember to stick to your business model. Take care of yourself so you don't get burned out.

I have been working from home since 1997. My business model did not change because of the pandemic.

However, work environments for my clients changed dramatically. Nearly all of them had to set up home offices and then juggle schooling and office space with spouses along with their pre-pandemic responsibilities. They have more demands on their time and more stress.

I am maintaining the key attributes that my clients have come to expect from me: high quality, dependability, flexibility, and affability. Additionally, I am keeping my business boundaries top of my mind. What does this look like?

I continue to meet client deadlines. I email periodic status reports so clients know how their project is progressing. I don't work weekends unless I have miscalculated how long projects would take. I am taking on less work and leaving more time to regain mental balance. I continue to refer clients to a select cadre of AMWA colleagues I know and trust. When I am feeling “Zoomed out,” I say no to virtual meetings and give myself a break from online technology.

—Melissa L. Bogen, ELS

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