

N.I.C.E. News

Alberta • British Columbia • Manitoba • Saskatchewan • Alaska • Idaho • Montana • Oregon • Utah • Washington

NOVEMBER 2011

President's Message

BY JEFF KNECHT



Jeff Knecht

One of the NICE Board goals this year was to increase member benefits and relevancy for our members. One of our first steps in accomplishing these goals is that sometime in February 2012 we will schedule Mike Zinser, NICE General Council to come to Seattle

and to make sure our independent contractor house is in order. Cal-West has been hosting this seminar for over 30 years at a cost of \$150 for their members to attend... We have decided to provide this training "free" of cost to any member! We hope you and or members of your management staff will take advantage of this opportunity. I am sure Dale or I will be sending out more information soon.

I am also pleased to announce too that Curtis Huber, Circulation Director at the Seattle Times has accepted our offer to become a board member as 3rd Vice president. Nathan Slater has replaced Ann Craven as 1st VP and Wyatt Gardiner has moved into 2nd VP.

Final preparations are underway to secure our 2012 joint NICE/CWCMA conference which will be held April 18th thru April 20th in Las Vegas, Nevada at Planet Hollywood. Our room rates have been secured at \$99.00 per night... but we can take advantage of that rate any time between April 15th and April 23rd. Our registration fees for the conference will be the same as last year... \$149 if it is paid by Feb 15th or \$199 if paid after Feb 15th. We had a conference call with Cal-West last week and hope to have the link for you to register on our website very soon. I know that some of you may want to do that before the end of 2011. We have an exciting Speaker agenda

coming together and thus far will include... Integrating social media into digital and print verticals - How do we build profitability, engage readers and increase readership that will ultimately produce paid readership. - Jim Hart President of Integrated Media Solutions.

Taking advantage of the rapidly evolving mobile, on-demand culture that is changing the way that brands engage consumers. Wais Asefi - CEO of Textmunication.

Digital Developments - how papers are effectively promoting, defining and maximizing their print/digital audience and what they have learned about consumer acceptance, usage patterns and overall reaction from their apps and other offerings such as Daily Deals. Sean Polay - Director of Mobile Products Dow Jones Local Media Group.

Strategic Advertising Strategies - How are our current advertisers evolving their strategies as conventional methods become less popular. How has the "extreme couponing" subject effected pre-print advertisers? - Jason Hicks Vice President of American Communications Group
Responsible Couponing - How can audiences benefit from this practice, while maintaining the integrity of our ABC requirements? - Speaker yet to be determined.

How to combat Irresponsible Couponing. What steps are being taken to see that newspapers are protected? - Speaker yet to be determined.

Independent Contracting Update - Mike Zinser - The Zinser Law Firm.

HOW TO REACH US

Secretary/Treasurer:

Dale Irvine
PO Box 778
La Conner, WA 98257
360-466-2006
nice@galaxynet.com

President:

Jeff Knecht
USA Today
425-649-5312
jknecht@usatoday.com

Visit our website at:
WWW.NICEX.ORG

Legally Speaking

L. Michael Zinser • TCMA General Counsel

The Sharon Herald Gets Independent Contractor Ruling in Pennsylvania



L. Michael Zinser

The Sharon Herald, a newspaper in Sharon, Pennsylvania, recently obtained an independent contractor ruling concerning one of the news-

paper carriers it contracts with for the delivery of newspapers. The carrier in question began delivering papers in 2001 and was still delivering papers pursuant to that agreement when she filed an unemployment claim against a company that had employed her between January 2009 and September 2010. The Pennsylvania Unemployment Compensation Board of Review held that the carrier performed her delivery services as an independent contractor, which the Board considered to be “sideline activity.”

The Board of Review resolved all conflicts in testimony in favor of The Sharon Herald, and found its witnesses to be credible. The Board found that the claimant signed an independent contractor agreement, receives an IRS 1099 form at the end of the year for tax purposes, and works in accordance with the terms and conditions of the independent contractor agreement. Notably, the claimant did not appear at the hearing. This was important because the Board, in a rare move, articulated that “when a claimant signs an independent contractor agreement, the burden then shifts to the claimant to show that she did not work in accordance with that agreement.” The Board found that the claimant, by not appearing at the hearing, failed to meet this burden; as a result, the claimant was engaged as an independent contractor with The Sharon Herald. However, the claimant’s

sideline activity did not disqualify her from receiving unemployment benefits from the company where she had been an actual employee; it just meant she would not receive benefits through The Sharon Herald.

Editor’s Note: The Zinser Law Firm represented The Sharon Herald in this appeal.

Victory at The Meadville Tribune!

As LawLight readers are well aware, whether newspaper distributors are independent contractors or employees for unemployment benefits purposes is a hot topic, and state unemployment agencies have been quite aggressive in their attempts to re-classify newspaper distributors as employees. In August, The Meadville Tribune was successful in persuading the Pennsylvania Department of Labor and Industry to find that a newspaper distributor who filed a claim against the newspaper was ineligible for benefits.

In this case, the distributor signed an independent contractor agreement that reflected the intention to create an independent contractor relationship. The distributor negotiated the fees she would receive for her delivery service, chose her sequence of delivery, hours worked, and had an investment in her business. She determined and was completely responsible for the number and type of vehicles to use, the use of substitutes (how, when and what to pay them), as well as any necessary tools, equipment and supplies. She received an IRS 1099 form, had no deductions made on her behalf, and was not entitled to any employee-like benefits such as vacation, sick leave, health insurance, or retirement/401k plans.

After reviewing the facts in this case, the Office of UC Benefits acknowledged Pennsylvania case law and held

that the newspaper distributor was free from direction and control in the performance of her job and was customarily engaged in an independently established trade, occupation, profession or business. Therefore, she was self-employed, and was denied unemployment benefits.

Editor’s Note: The Zinser Law Firm, P.C. represented The Meadville Tribune in this matter.

Freelance Writers are Independent in California

In a recent ruling of the Employment Development Department, freelance writers and photographers of The Goleta Valley Voice, Blue Edge, and El Mexicano were found to be independent contractors for unemployment tax purposes. In making the ruling, the following factors of contractor status were important:

The Publisher did not control the manner or means of producing the articles or photographs.

Thirty days’ advance written notice had to be provided for termination of this agreement.

The freelancers were unsupervised.

The freelancers were paid by the job and retained copyright ownership of their work.

Both parties to the agreement believed the freelancers were independent contractors.

The freelance writers and photographers were provided IRS Form 1099 for tax purposes.

Editor’s Note: Ampersand Publishing, LLC was represented by The Zinser Law Firm.

Discover Your Own Backyard!



Eileen Widdison

Grants Pass Oregon is a vacation area that is conveniently located half way between Seattle and San Francisco. We are blessed with an abundance of natural resources. The mighty Rogue River runs through our community, the mountains, lakes and streams teem with trout and we have some of the best white water rafting in the west. I think it's a wonderful place to call home. Have you ever noticed that some of the absolute best things in life are right outside your window?

The last two carrier and sales programs and our latest retention programs were designed with the local community in mind. We wanted to have some fun, make some sales and do some of the things that vacationers enjoy when they pay a visit to the Rogue Valley. I'll start with a plug for the latest NICE/Cal West sales conference which was held in Reno last spring. We were treated to a presentation by Gary Olsewski from the Baltimore Sun. He pitched an amazing program that they have to keep readers called Reader Rewards. I was so impressed that I stole it. Thanks, Gary.

We're a small market and didn't have the resources that Baltimore has, but I put on my "staycation" glasses and looked around. Here's how our program worked. I contacted local vacation oriented businesses in our area that locals would enjoy. I had several high end lodging and fishing outfitters, a golf course, a whitewater rafting company, a spa, several ex-

pensive restaurants and a number of tourist concerns on the Oregon Coast. I offered them a free full page ad in full color at absolutely no charge to the advertiser. What I asked in return was a two for one offer that we would give to our readers. There were only 14 spots available in the full color tabloid. The advertisers were thrilled to have the chance to showcase themselves to our readership and the response was phenomenal. We made sure that the Reader Rewards piece was only inserted in our home delivery newspapers and we heavily promoted it with in paper ads. The business participation was excellent and we will be producing another version of it for the winter months. Our newspaper carriers used it for three weeks to promote new starts with decent results.

Our carriers have generated 476 starts for The Daily Courier from January 1, 2011 to October of 2011. The retention on our carrier starts is 74.25 percent. There's room for improvement, but they do a pretty decent job for us. This year one of our best contests involved a dinner and whitewater jetboat trip. Hellgate Excursions is a local outfitter who takes boats with 60 people down the river to their dinner house the OK Corral. It's an absolute blast to be on the river with friends, go really fast and spin around. Once you get to the Corral you are treated to a five course all you can eat banquet with unlimited beer and wine. The contest this year was based on a five months for the price of three offer. If the carrier got 7 starts they were included on the boat trip. We took 25 carriers and their families on an awesome late summer trip. A friend of mine who happens to be a circulation director was in town

on vacation. He offered to buy some starts for us but we decided to let him go down the river without the start. It was a popular and fun way to reward our carriers and our district managers with an awesome evening adventure. Ten of the carriers who earned the trip had never been on a Hellgate boat. They finally discovered what thousands of people have learned about Grants Pass. It's an awesome vacation destination and a wonderful place to live. It's really nice to have some time with the carrier force and just enjoy yourselves. We will very likely do the contest this year as well.

Our warehouse is filling up with inserts and we are off to a great start on the holiday season in southern Oregon. I wish you a full warehouse, good runs and happy holidays.



Take advantage of our \$149 early bird special and save 25%!

CWCMA and NICE COMBINED SALES CONFERENCE

APRIL 18 - 20, 2012 • Only \$149

Planet Hollywood
Hotel and Casino
Las Vegas, Nevada

Don't miss out the three most "circulation" days of the year!
For only \$149 join us for an exclusive opportunity to ...

- DEVELOP** new revenue ideas
- INCREASE** efficiency within your organization
- SHARE** insights with associates
- EMBRACE** the always changing environment
- RESIDE** in the know
- NETWORK** with industry leaders



2012 SPECIAL EVENTS

WEDNESDAY, APRIL 18
Golf Tournament
President's Cocktail
Reception

THURSDAY, APRIL 19
Breakfast
Conference Session — Full Day
Vendors & Exhibits
Lunch
Cocktail Reception hosted by The Zinser Law Firm

FRIDAY, APRIL 20
Breakfast
Awards Ceremony
Conference Session — Half Day
Vendors & Exhibits

CONFERENCE REGISTRATION

Register today for the 2012 CWCMA/NICE Combined Sales Conference for only \$149 for all three days!

The price will increase to \$199 after February 14, 2012. Please make checks payable to: CWCMA and mail to: CWCMA, 8345 Singh Court, Hemet, CA 92545-9388. For credit card payment, please fax this form to 951-253-3437. Or, register online at www.cwcma.com.

Name _____ Company _____

Address _____ City, State, ZIP _____

Phone _____ E-mail _____ Spouse/Guest Name _____

Name on Credit Card _____ Verification # _____

Credit Card Number _____ Expiration Date _____

Choose Credit Card:



LODGING Only \$99/night!

Book now at the Planet Hollywood Hotel and Casino and ask for the CWCMA Meeting 2012 Special Rate — only \$99 per night! Rates are valid for April 17-22, 2012.

[Click here to make hotel reservations](#)
Or call 800.270.3574
Ask for CWCMA/NICE rate

Early Bird Special	Full Conference CWCMA or NICE Member <input type="checkbox"/> \$149.	Full Conference Non-Member <input type="checkbox"/> \$249. *	Day Pass CWCMA or NICE Member <input type="checkbox"/> \$99.	Day Pass Non-Member <input type="checkbox"/> \$199.	X _____ Participants = \$ _____
Feb. 15 - April 15	Full Conference CWCMA or NICE Member <input type="checkbox"/> \$199.	Full Conference Non-Member <input type="checkbox"/> \$299. *	Day Pass CWCMA or NICE Member <input type="checkbox"/> \$149.	Day Pass Non-Member <input type="checkbox"/> \$249.	X _____ Participants = \$ _____
At the Door	Full Conference CWCMA or NICE Member <input type="checkbox"/> \$249.	Full Conference Non-Member <input type="checkbox"/> \$329.	Day Pass CWCMA or NICE Member <input type="checkbox"/> \$199.	Day Pass Non-Member <input type="checkbox"/> \$249.	X _____ Participants = \$ _____
Guest Registration	<input type="checkbox"/> \$50.				X _____ Participants = \$ _____
* Full Conference Non-Member registration includes one year membership in CWCMA or NICE					Total Enclosed \$ _____

Make your reservation NOW! Go to www.cwcma.com to make your reservation online.