

It's Important to Understand How Your Lawyer Thinks

BY RANDY GILLARY



One thing that I have learned in more than 30 years of practicing law is that it is important for the client to have a good understanding of the manner in which his or her lawyer thinks. I explain to my clients that lawyers are in the information processing business. Now that is not all that we do but it is an important part of it. We take large amounts of information and try to condense it down to a manageable level that we can present to a jury, judge or arbitrator to present a clear and concise case for our client. In many instances, what our client thinks is important is not the same as what we think is important. Therein lies the rub.

The lawyer's job is to present his or her client's case to a judge, jury or arbitration panel in a clear and concise manner. This primarily means that it is the lawyer's job to establish the elements of the case for the cli-

ent so that the judge, jury or arbitrator can easily understand the client's case and rule in the client's favor. The elements that the sales representative's attorney must present in a typical sales commission claim are:

- ① There is a contract to pay sales commissions.
- ② The principal owes a specific amount of sales commissions pursuant to the contract.
- ③ The principal did not pay the sales commissions owed.

I like to analogize what we do in reviewing documents, listening to deposition testimony, or otherwise reviewing data, to the way that I originally learned about the manner in which a computer works. My recollection may or may not be correct, but this is what I remember. A computer analyzes information by assigning each piece of information either a plus or a minus. I like to explain to my clients that lawyers think the same way. I basically analyze each piece of information as follows:

- ① Is the data/fact relevant to proving an element of my case? This is either yes or no or plus or a minus.
- ② If yes, then what I do is to categorize the data/fact in the little T graph in my head for each of the elements that I have to prove with again, a plus or a minus.
- ③ My analysis and evaluation of the case is ultimately based on the totaling of the pluses and minuses for each of the elements of the case that I need to prove.

Judges, juries and arbitrators also tend to process information in the same manner. They listen to the facts or review the documents that are presented into evidence and then tend to categorize the facts into their own T-graphs in their heads. The more irrelevant information

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that they are required to process and categorize, the more likely it is that they will lose interest. You should assume that jurors have about a seventh grade education and that many of them would rather be somewhere else. The harder the attorney makes it for the jurors to understand the case, the harder it will be for the attorney to get a good result.

Even if the attorney is presenting the case to a judge or arbitrator who is in the business of resolving disputes, i.e., they are getting paid, it is still not good policy to present irrelevant information. This tends to make the judge or arbitrator perform a lot of extra mental work for no clear purpose. Frankly, it is unprofessional for the attorney to present irrelevant information and the attorney will risk losing his or her credibility. If your attorney loses his or her credibility with the person who is in the position of deciding the case, bad things are likely to happen.

As I mentioned above, sometimes the attorney and the client are not clearly in accord in terms

of what is relevant and important and what is irrelevant and not important. Clients sometimes get sidetracked with other issues. Some of these are as follows:

- ① Whether the salesperson is a good person.
- ② Whether the principal is a good person or company.

Sales representatives sometimes take the failure to pay earned commissions very personally and understandably so. The case is not about validating the career of the sales representative. The case is generally about whether the principal owes sales commissions and if so, how much is owed. It is important for the sales representative not to take the litigation too personally or emotionally. This is sometimes easier said than done.

In conclusion, it is important for the sales representative to listen to the advice of the lawyer as to what the lawyer believes should be the focus of the case and what is important and what is not as important. This is what we do for a living. 



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