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*Leonard Bucklin*

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❖ This is a PowerLitigation™ article of Leonard Bucklin. This article was adapted for LawyerTrialForms™ from his multi- volume text of discovery, and trial advice , titled *Building Trial Notebooks*, available from James Publishing. More information about this substantial text is available at <http://www.jamespublishing.com/books/btn.htm>

## Dealing with Rambo: Summarizing oral agreements.

Your first line of defense when dealing with an "oral agreement" with Rambo is to be the first to write a summarizing letter. While items are fresh in your memory, **write down the shortest possible memo of bulleted, numbered, conclusions** of what the conference was about and provided.

Sometimes the adversary attorney is the SOB type who sends a letter that purports to summarize a conversation or oral agreements you had with him/her, but that is full of either misrepresentations or of things never discussed.

Do not make a lengthy letter. Just conclusions. Just bullet points, preferably numbered. Send it out to Rambo immediately when you have laid down the phone with him/her or have gotten back to the office after the conference.

Remember the military have it right: be the first to occupy the ground and force the other side to attack you where you have chosen.

But let's suppose that either you are not the first to fire off a letter summarizing the oral agreement, or, alternatively, that Rambo responds to your letter with his/her own "summary." Sometimes the adversary attorney is the SOB type who sends a letter that purports to summarize a conversation or oral agreements you had with him/her, but that

is full of either misrepresentations or of things never discussed. Do not waste your time and your emotions responding in detail.

I'm not talking about the times when only one item is wrong, and your adversary appears only innocently mistaken. I'm talking about the times when the adverse attorney obviously is trying to waste your time so as to divert your well-paced attack, or hoping you will agree to save your time.

You have to respond, or you are stuck with the judge deciding you were in agreement with what was said in the letter of the SOB. However, if you take the time to send out a detailed letter in response, the chances are 90% that you will only provoke a battle of disagreement and waste hours of your time in a verbal battle. Remember, the SOB who sent the letter full of misstatements and misrepresentation is trying to waste your time so as to divert your well-paced attack, or hoping you will agree to save your time. Do not fall into the SOB's trap. A detailed letter back at this time will not accomplish any change in the attitude or purpose of the SOB. Here's what to do.

1. Pull out that list you made (Remember, we started out by saying: "While items are fresh in your memory, write down the shortest possible memo of bulleted, numbered, conclusions of what the conference was about and provided.") Now, having looked at your short list again and made a corrections needed, set that set of bulleted, numbered, conclusions aside for a later time (see item 4 below). Don't send it yet.
2. Send only the following three sentence response.

I have your letter dated \_\_\_\_\_. I do not have the time to correct all of the numerous misstatements it makes concerning our conference. Suffice it to say it does not represent our conference or our agreement.
3. Then leave aside the matter of reducing your conference oral agreement to writing. Instead,
  - A. Perform according to what you understand the conference to have provided; and
  - B. Each time with your performance send a letter or add a note that you are doing the item "in accordance with our conference of \_\_\_\_\_".
4. Sooner or later the other side will respond asking what you think was agreed upon. Only when the SOB asks what you think was agreed upon, at that time, pull up memo of bulleted, numbered, conclusions you made and earlier set aside (see item 1 above). Use it now. Only at this time you write back a short letter saying: "Enclosed is a memo of our understanding. Today, I have signed and dated it. Please sign and date it and return it to me in the enclosed return envelope."

That's it. Don't waste any more time.

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