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# Attorney Urges Reps To Keep Accurate Records



*Timothy Jay Junk*

While rep law isn't the niche he necessarily carved out for himself, a chance meeting with a rep at a wedding more than 10 years ago alerted Tim Junk to the fact that reps have special needs and they aren't always treated fairly in their business relationships.

Junk, who works full-time as a State of Indiana deputy attorney general defending the state and prosecuting cases of environmental litigation, recalls that hearing a rep's problem 10 years ago educated him to the need for reps to seek out qualified legal counsel.

Here's how the attorney's relationship with reps began. "A father-and-son agency described a situation they were being faced with. A manufacturer that was responsible for close to 90 percent of the rep's business decided to terminate the relationship with a 30-day notice. The reps had no written contract. As a result, when they sought legal advice,

they were told nothing could be done for them. I decided to take on their case, and while it took me a year, I eventually received recovery for damages through the court."

With that as a beginning, Junk explains that word-of-mouth referrals from one rep to another have resulted in work that he performs for independent reps totally aside from the full-time work he performs for the state.

Over the course of more than 10 years working with reps, Junk has developed a number of thoughts on the uniqueness of the rep/manufacturer relationship and how legal concerns can impact their businesses.

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## **The Importance of Accurate Record Keeping**

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According to Junk, the tasks of taking and keeping good notes are of paramount importance. "Keep

good notes and records covering all aspects of the job you perform for manufacturers. Have records of whom you call on and what you did. This allows the rep to create a more convincing story if and when a dispute develops."

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## **To Have or Not to Have a Contract**

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Junk isn't necessarily the staunchest believer in the need for reps to have written contracts. "I've wondered a lot about this subject. You can have the best-written contract in the world, and the rep can still get stiffed. On the other hand, I've had considerable success recovering commissions for reps when they had no written contracts. Once again, the key is to have detailed notes covering all that the rep has done for the manufacturer. For instance, I can recall one rep I worked with who maintained a database that

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contained more than 200 different people he called upon at 100 different entities. His records covered a period of 15 months and his activities resulted in more than \$2 million a year in business. Since he could recite all the facts and figures involved in what he did, he made my job easy. In the end, it's not the quality of the contract the rep might have that will help him, it's the quality of the records he's maintained over the course of the relationship."

He adds that a rep operating without a contract can sometimes be in a better position than one who has a written document of agreement. "A contract often defines the rep's specific duties and cuts off the amount of commissions he earns. When a contract does not exist, I can argue that the rep is entitled to commissions for the life of the product."

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### Statutes Protecting the Rep

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Perhaps more important than written contracts, according to the attorney, is the existence of state statutes that protect the rep. "The fact that in Indiana the manufacturer may be liable for triple damages, attorney's fees

and recovery vs. the manufacturer generally gets their attention. In addition, I've found that not all manufacturers are aware of these statutes."

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### Commodity vs. Custom Sales

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When it comes to recovering commissions that the rep is owed — either with or without a contract — Junk maintains that the path is a little easier when it involves custom sales vs. commodity product transactions. "I've found that with commodity orders the case can be a little more difficult to make. When a product has to be designed for the customer, however, it's a different story. For instance, it's much more clear if we're talking about the right hand door handle for a special kind of car. That type of sale requires a special design. More times than not the rep has detailed records showing the extent of his contribution. It's much easier to define the relationship and the sale."

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### Litigation

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Just as most attorneys involved in the rep law, Junk agrees that

litigation can be expensive and all parties involved would do well to avoid it when possible. "Look, I'm a pretty good carpenter if you need one, but the goal here should be to avoid court. Once you get into court, you dance to the tune of the judge — and it may not be a dance you want. If there's a dispute, the rep should not be greedy. His goal should be to get just what he's entitled to."

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### Save for a Rainy Day

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"Relationships between reps and manufacturers, just as relationships between anyone, come and go. The bottom line is that while the rep never wants to be terminated, he certainly doesn't want to be terminated at a time when he can least afford it and find that he can't weather the storm. The rep would be well served to always keep his expenses in check and keep them low enough so when a problem develops he can survive it."