

DAVID ALLEN

Using Patience and Persistence To Achieve ‘Good Luck’

by Mike Bailey

To Chicago attorney David Allen, the race belongs to the persistent. He agrees with Emerson that good luck is another name for tenacity of purpose.

Allen, partner with **Faegre Baker Daniels LLP**, handles litigation that often stretches for years, involving dozens of depositions, motions and lengthy discovery. Patience, learned long

beginnings of my interest in law,” Allen says.

Complex litigation in estate disputes and corporate lawsuits often feature issues layered between gray areas of the law and require patience to unravel. Estate litigation can be particularly nasty, he says, lasting six to eight years.

“We sometimes called estate litigation ‘death

the scrivener of the will, and explored various medical issues as well.”

“The decedent was living with the sister and her husband and we believe they diverted the proceeds of the estate from the children by telling the decedent that her children didn’t really care about her. We settled in the seven-figure range, and a short time later, they filed



ago in his small hometown of Biddeford, Maine, prepared him well for the grind.

“My father, Donald P. Allen, was a lawyer and sole practitioner for 35 years, and my mother, Marjorie, taught home economics. We had deep roots in that town. My grandfather, Herbert Thompson, owned an appliance store. I loved to go to his lobster traps with him when I was just a boy. He’d measure the catch and if it didn’t conform to the legal size, he’d throw it back. I asked him one day why he had to throw them back. He said, ‘Because that’s the law and I could be fined and lose my license.’ His respect for what was right was the very

divorces.’ There are deep-seated emotions at play that drive the behavior of the litigants. They can get very acrimonious and cause (people) to war with each other for extended periods of time. Commercial litigation tends to be less emotional and more rational and leads more often to settlement because that is in the best interest of all parties.”

He recalls representing children cut out of their mother’s will with the entire estate going to her sister. “The sister,” he recalls, “was also the executor of the estate, and we sued, claiming undue influence. That case lasted four years and involved depositions of several witnesses,

suit challenging the enforceability of the settlement agreement. The judge ultimately ruled the agreement had been reported to the court and was binding.”

In for the Long Haul

A large portion of Allen’s work regards breach of contract, tortious interference, fraud, misappropriation of trade secrets, and antitrust issues.

In the 1980s, Allen was part of a team of litigators for the manufacturer of medical products in a dispute with its international marketer, involving alleged lack of performance

as specified in their contract.

The issue involved 110 days of arbitration, considered the longest arbitration in Illinois at that point and took over four years to resolve.

“That case went a long way to further my career as a litigator and a trial lawyer,” Allen says. “There was a lot at stake there. Not too often is a client willing to fight it out for such an extended period of time. We called expert witnesses in the area of accounting, marketing, manufacturing representatives, and other areas. The international marketer was represented by some accomplished trial lawyers and I learned a lot from them as well.”

“Our position was that the marketer was not properly representing the interests of our client. Woven into that were foreign currency issues and other matters. That arbitration helped set the standard of performance for the marketer. We were able to negotiate an early termination of our agreement in various countries,” he says.

Catherine Gryczan, a fellow attorney at Faegre Baker Daniels who worked with Allen on one particularly complex case, calls him bright and methodical.

“He is very careful and works over the details, finding little nuances that others miss. He knows what he wants in a deposition and he gets it. He is always thinking about what is best for his client and tries very hard to find the right solution,” she says.

‘Instant Credibility’

Gryczan adds that “when David walks into a courtroom, he has instant credibility with judges and other counsel. He also maintains the right judicial decorum with judges and opposing counsel.”

Fellow Faegre Baker Daniels attorney Richard Michaels echoes that: “We go back 31 years, and I can tell you he is the most detail-oriented lawyer I have ever known.”

“He never raises his voice. His style is to use his mental acuity to the advantage of the client. He feels he can get more flies with honey than vinegar. He’s always careful, never overstates his position and as a result, gets significant cooperation from the other side. If he says he will do something, it’s as good as done. If he says you have an agreement, you can fully trust him. As a consequence, he gets results,” Michaels says.

Results are why Allen was named an Illinois Leading Lawyer from 2004–12 and an Illinois Super Lawyer in 2005, 2006, and from 2008–2012.

Allen does not believe in using deception or clever ruses in depositions.

“My philosophy is to show the other side the weakness of their case and force them to move

toward settlement,” he says. “A lot of attorneys don’t want to reveal their cases in depositions, but I think you have to engage in battle to show the other side your position. They might erroneously believe they have a good case. My strategy is to expose the weaknesses in their position to induce a settlement as soon as possible. That’s in the client’s best interest rather than letting a case drag on unnecessarily.”

As a result, Allen uses more of a cross-examination approach in depositions rather than just letting the deponent tell his story. “That requires more time and more study of the documents but I want to show them the dangers they face if they go to trial.”

“Some years ago, I acted as lead litigation counsel for the beneficiary of one of several trusts that owned stock in various corporations operating a large retirement center in Florida,” he recalls. “Our client’s brother, who was one of the trustees, was attempting to purchase the stock for himself at less than fair market value. Our client filed suit in federal court, alleging breach of fiduciary duty by the trustees and the directors and officers of the corporations.

“Thereafter, the trustees filed suit in state court, seeking approval of their ‘accounting’—a forum where they were able to gain some traction before the local judge. The litigation continued in both arenas until we successfully removed the trustees’ suit to federal court, which became possible when dismissal of one of the other defendants created ‘diversity of citizenship’ jurisdiction there. The removal soon led to a settlement of these cases on terms we felt advantageous to the client.”

One of Allen’s most interesting and complex cases involved the transfer of a family-owned manufacturing company to an Employee Stock Ownership Plan (ESOP) in 1996.

“The family sold most of the company to the ESOP,” he recalls.

Valuations were done of the shares and of one division sold back to the family. Skilled attorneys documented the whole matter, he says.

But 10 years later, the ESOP sued the family, claiming that the company had been overvalued and the division sold back to the family was undervalued. The suit alleged non-disclosure of key elements, breach of fiduciary duty, and other allegations. Through Allen, the family filed a multi-count counter claim, alleging breach of contract, defamation, tortious interference, and others.

After two years of discovery and 45 days of depositions involving 30 witnesses and 200,000 documents, Allen’s team negotiated a settlement “on terms advantageous to our clients,” he says with a smile.

“There was obviously a lot at stake here. We had great collaboration between transactional and litigation lawyers and our clients were actively involved in defining the strategy. I think it is very important in these cases to work in concert with the clients,” he says.

Allen’s methodical approach begins before he even agrees to take a case.

“I listen to the client and do a lot of due diligence to evaluate their claim. I analyze documents and explore the legal issues, identify material witnesses and then how to best position the client for a favorable outcome. We try to do an overview of how we see the case unfolding and meet with the clients to make sure they agree with our approach. It’s important that we keep the client informed at every step so they know what their attorney is doing. Our clients are an amazing resource with a level of sophistication and intelligence that lawyers sometimes overlook. We want everyone’s best thinking.”

Allen has benefited greatly in his practice from his role as an arbitrator for the American Arbitration Association.

“Seeing a case from the perspective of a finder of fact has changed my perspective,” he says. “Lawyers would be well-served to see a case as a judge or jury would see it. My role as an arbitrator has given me insights on what a good argument is and the importance of impeaching a witness because as finder of fact I have to judge the credibility of witnesses. Sometimes as an attorney, we see only our side, and we think we have a good case, but seeing the entire case unfold gave me a different perspective.”

“David has a way of finding and then shaping a strategy,” says Rachel Nguyen, who started her law career with Allen years ago and remains at Faegre Baker Daniels.

“He is so tenacious and so thorough. He eats, breathes, and sleeps his clients’ interests. He quickly gets a global picture of the case and knows where he wants to go. In depositions, he knows what he wants and has a way of questioning that allows him to get the information without the deponent even realizing where he’s going. He’s always several steps ahead of the opposition,” Nguyen adds.

Allen’s days are largely consumed by his clients, but he and his wife, Mary M. Linberger, a commercial real estate appraiser who often testifies as an expert witness in eminent domain and land use cases, enjoy sailing. Allen has a sailboat at Monroe Harbor and often returns to his native Maine and his roots.

The center of his personal life really are his grandchildren: Robert Julian, 4, and Gregory David, 2, children of his son, Joshua Allen, 36. ■