

THE INSIGHT INTERVIEW



Donald Bunnin

The Insight Interview features interviews with leading jurists, lawyers and business executives. The series focuses specifically on practical, real-world advice for lawyers in their first 10 years of practice.

This installment features Donald Bunnin, Senior Litigation Counsel at Allergan, plc, the \$23 billion diversified global pharmaceutical company that makes products such as BOTOX®, Juvéderm®, Namenda XR® and Restasis®. Mr. Bunnin was interviewed by Steven Feldman, an associate with Hueston Hennigan LLP in Los Angeles, CA.



Steven Feldman

How would you describe your role as Allergan's Senior Litigation Counsel and what are the key issues with which you deal on a day-to-day basis?

We have an approximately 120-person legal team at Allergan, and I am part of a four-lawyer team responsible for all of Allergan's commercial litigation. That essentially means everything but patent infringement cases. I spend a lot of my time on antitrust cases, government investigations, class actions, product liability cases and employment litigation.

What do you enjoy most about your job at Allergan?

The variety of work. I handle almost 80 cases at any one time, and I have the flexibility to pick and choose where I want to dig in. Consequently, I get to spend my time at the hearings, trials and mediations that matter most. I also enjoy dealing with budgets, and working creatively with outside counsel on developing alternative fee arrangements that align Allergan's interests with theirs and reward excellent work.

Based on your years of experience in-house, do you have any advice for associates on how to stand out to a client?

Do good work. Ultimately, that's what the job is about. Also, try to be proactive: an email identifying a problem is only half an email. The full email identifies the problem and provides a suggested solution. Associates should realize that this is a relationship business. Just like you're trying to build a relationship

with partners in your firm, you should be trying to do that with the client because – at the end of the day – that is how you will get more work, more cases and more opportunities. If you're an associate and want to argue a motion to dismiss, and I don't know you, it will be hard for me to say yes. I want to say yes, but I need to know I can trust that person.

What advice do you have for associates and junior partners who are thinking about how they can generate business?

The way I look at it is, the moment you are doing client work, you are doing business development. Every interaction you have with a client is business development because you are building that relationship. Business development is just building relationships. Yes, you must have excellent lawyering skills, but you need more than that.

You could be a fantastic antitrust lawyer, but there are dozens of fantastic antitrust lawyers, so the question is: How do you become the one I give the case to when they are all pitching for it? The answer is building a relationship. And that should start on day one – from the first e-mail or the first coffee we have. The lawyers that get a lot of business understand that.

Generally, when a new matter comes in, automatically four lawyers or firms pop into my mind. You need to figure out how to be one of those four people or four firms. And if you think business development is just cocktail mixers, you are missing out on the most important interactions you'll have. You need to find

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common ground and develop real friendships and real relationships.

Do you have any advice for outside counsel that you think isn't heeded often enough?

Be honest and up front. If there's bad news, tell me. At the end of the day, surprises are what get in-house counsel upset. Also, it is critical to be mindful of cost when staffing cases – it can be very frustrating when there are too many attorneys involved.

When you graduated from law school at USC, you worked as an associate at Latham & Watkins and then another firm. On what type of work did you focus during your years as an associate, and do you find that background useful today?

As an associate, I handled a mix of intellectual property matters – including copyright and Lanham Act litigation – and securities and regulatory work – including SEC and FTC investigations. A good deal of the civil procedure and e-discovery that I learned as an associate is still helpful today. When working with Allergan's outside firms, that experience allows me to make better strategic decisions and ask better questions. As an in-house lawyer, it is critical that you know those nuts and bolts, and that you know how to not let e-discovery spin out of control.

Is there anything you miss about working in a law firm?

There are good and bad things about working at a law firm, just as there are in-house. While I miss the brief writing and arguing in court, in my current job, I don't have to deal with those aspects of the law firm job I did not like, such as extensive legal research. Perhaps most importantly, as an in-house lawyer, I have more control over how I spend my time.

Steven Feldman is a senior associate with Hueston Hennigan LLP, in Los Angeles.

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amendment will change its legal effect. (*Id.* at p. 1388.)

Here are some suggestions for lawyers and trial courts to consider. If the plaintiff appears at the hearing on the demurrer with a proposed amended complaint, defense counsel should not object that it is "too late," but should ask the court to consider whether the new pleading cures the defects. Or, if the plaintiff orally requests leave to amend at the hearing, defense counsel should invite the court to inquire exactly what additional or different facts the plaintiff can allege. The parties and court can then decide whether to take the hearing off calendar, continue the hearing, or submit the matter to the court, perhaps with further briefing. Defense counsel should not think we are suggesting they should "help out the opponent." We are suggesting it is better for the trial court to consider the amendment to avoid the cost and delay of reversal on appeal.

On appeal, if there are new facts the plaintiff can allege, those facts should be clearly stated with as much specificity as possible in the opening brief, so that the defendant has an opportunity to respond in its brief. If the proposed facts will not cure the defect, the defendant should point out the deficiencies of the proposed amendments with citation to the relevant authorities. The issue of leave to amend is open on appeal. But, the rule of liberal amendment does not apply with unyielding force to each new round of unsuccessful amendments, nor will a reversal be ordered where amendment is shown to be futile.

Hon. Elizabeth A. Grimes is an Associate Justice of the California Court of Appeal, Second Appellate District, Division Eight, in Los Angeles.

Barbara Seeley Moreno is a Senior Appellate Attorney, California Court of Appeal, Second Appellate District, Division Eight, in Los Angeles.