



AMERICAN  
BANKRUPTCY  
INSTITUTE

# 2019 Mid-Level Professional Development Program

## Practice Tips from the Bench

### **Curtis S. Miller, Moderator**

*Morris, Nichols, Arsht & Tunnell LLP; Wilmington, Del.*

### **Hon. Shelley C. Chapman**

*U.S. Bankruptcy Court (S.D.N.Y.); New York*

### **Hon. Barbara J. Houser**

*U.S. Bankruptcy Court (N.D. Tex.); Dallas*

### **Hon. Vincent F. Papalia**

*U.S. Bankruptcy Court (D. N.J.); Newark*

# ABI 2019: Mid-Level Professional Development Program

Practice Tips from the Bench

## Panelists

- Hon. Shelley C. Chapman\*
  - U.S. Bankruptcy Court (S.D.N.Y.)
- Hon. Barbara J. Houser\*
  - U.S. Bankruptcy Court (N.D. Tex.)
- Honorable Vincent F. Papalia\*
  - U.S. Bankruptcy Court (D.N.J.)

### Moderator:

- Curtis S. Miller
  - Morris, Nichols, Arsht & Tunnell LLP

\* Nothing the Judges say today may be construed as precedent or as dictating the outcome of pending or future cases before them.



## Topics

- Oral advocacy
- Written advocacy
- Expert analysis and testimony

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3



## Oral Advocacy

- Preparation for oral argument
  - Practice, Practice, Practice
  - Observe oral argument in front of Judge
  - Know the facts of your case inside and out
  - Know the relevant pleadings and case law inside and out, including your opponent's cases
- Presentation and organization of oral argument
  - The importance of roadmapping
  - Address each argument in turn
  - Speak clearly and at a normal pace

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4

## Oral Advocacy

- Highlighting the strengths and addressing the weaknesses of an argument
  - Know the strengths and weaknesses of your argument and your opponent's
  - Focus on the most important points
  - Concede and address weaknesses when necessary
  - Anticipate the hard questions and prepare responses in advance

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5

## Oral Advocacy

- Addressing questions from the Court
  - Welcome questions from the Court
  - Address questions directly
- Do's and don'ts during oral argument
  - Be respectful, credible and flexible
  - Minimize rhetoric
  - Do not attack the other side
- Pet Peeves

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6

## Written Advocacy

- Organizing the brief
  - Roadmap
  - Address each issue in turn
- Maximizing the effectiveness of a preliminary statement
  - Keep it clear and concise
  - Provide an overview of the argument and why you should win

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7

## Written Advocacy

- Presentation of the facts in a brief
  - Provide the story for the Court
  - Highlight the most important facts for your arguments
- Making the arguments
  - Focus on your best arguments rather than make as many as possible
  - Distinguish unfavorable case law

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8

## Written Advocacy

- Do's and don'ts of brief writing
  - Make it easy for the reader (a/k/a the Court)
  - Write clearly and concisely
  - Minimize rhetoric
  - Do not attack the other side
  - Be credible

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9

## Expert Testimony

- Testimony:
  - Be honest
  - Don't speculate
  - Be cautious about volunteering helpful information
  - Take your time to think before answering questions
  - Ask for clarification if necessary
  - Consider whether lay opinion testimony is more appropriate
- Declarations/Affidavits:
  - Review carefully – You will be crossed on anything filed
  - Don't sign if you're uncomfortable

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10

## Question and Answer

- Questions?

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11

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